IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.9229 of 2014 (O&M)
Date of Decision: 19.09.2018

New India Assurance Co. Ltd.

... Appellant

Versus

Mamo Devi and others

... Respondents

FAO No.10357 of 2014 (O&M)

Mamo Devi and others

.. Appellants

Versus

Gopesh Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Ashwani Talwar, Advocate,
for the appellant-Insurance Company.

Mr. Bhupender Singh, Advocate,
for driver and owner.

Mr. Sagar Aggarwal, Advocate,
for the claimants.

TEJINDER SINGH DHINDSA, J.(ORAL)

This order shall dispose of FAO No. 9229 of 2014 (New India Assurance Company Limited Vs. Mamo Devi and others) and FAO No.10357 of 2014 (Mamo Devi and others Vs. Gopesh Singh and others) as both these connected appeals arise out of award dated 07.08.2014 passed by the Motor Accident Claims Tribunal, Karnal.

It may be noticed that vide impugned award, compensation amount of Rs.11,30,900/- has been awarded in favour of the claimants on account of death of Prem Pal in a motor vehicle accident that took place on 16.04.2013.

FAO No.10357 of 2014 is at the hands of the claimants seeking enhancement of compensation and FAO No.9229 of 2014 has been filed by the New India Assurance Company Limited and in which also the only issue raised is with regard to quantum.

I have heard counsel for the parties at length and perused the pleadings on record.

Briefly, it may be noticed that a claim petition was filed under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.30 lakhs on account of death of Prem Pal in an accident that took place on 16.04.2013.

Claimants were the widow, daughter and minor son of the deceased. It was asserted that Prem Pal (since deceased) was proceeding on a motorcycle and was struck by a car bearing registration No.HR-05-AF-1194 and which was being driven in a rash and negligent manner by Sh. Gopesh Singh.

The claim petition having been contested, the following issues were framed by the Tribunal:-

1. ***Whether the deceased Prem Pal son of Mansa Ram had died in a road side accident which took place on 16.04.2013 at about 1/1.30 PM on GT Road near Samana Bahu Flyover, because of rash and negligent driving of the respondent No.1 being driver of the offending vehicle bearing No.HR05-AF-1194? OPP.***
2. ***If issue No.1 is proved in affirmative, whether***

the claimants are entitled for compensation, if so to what amount and on what terms and conditions and from whom? OPP.

3. ***Whether respondent No.1 was not having a valid and effective driving licence at the time of this accident and the vehicle in question was being plied, if so to what effect? OPR3***
4. ***Whether the vehicle in question was being plied without a valid policy and in contravention of terms and conditions of the policy, if so to what effect? OPR3.***
5. ***Relief.***

With regard to issue No.1, findings were returned in favour of the claimants and it was held that death of Prem Pal occurred on account of the accident that took place on 16.04.2013 involving the offending/insured car and which was being driven on account of rash and negligent driving.

With regard to quantum of compensation, Tribunal has accepted the age of the deceased to be 45 years and as was mentioned in the post-mortem report Ex.P3. Income of the deceased has been assessed as Rs.6700/- per month. 1/3rd deduction has been made towards personal and living expenses of the deceased. Multiplier of 13 has been applied to the multiplicand. 30% addition in income towards future prospects has been awarded. That apart a sum of Rs.1 lakh has been awarded towards loss of consortium in favour of the widow and like amount of Rs.1 lakh has been granted towards loss of care and guidance for the minor children and Rs.25,000/- has been awarded towards funeral expenses. The total compensation amount computed is Rs.11,30,900/-.

Mr. Ashwani Talwar, learned counsel representing the appellant Insurance Company in FAO No.9229 of 2014 has vehemently contended that the Tribunal has assessed the monthly income of the deceased on the basis of DC rates. It is urged that the Tribunal ought to have been guided by the relevant State Government Notification and as per which the minimum wages admissible to a skilled worker were Rs.5732/- per month.

Per contra counsel representing the appellant(s) in the connected FAO No.10357 of 2014 would seek to impress upon this Court that the deceased was a 'mason' and as a skilled worker his income ought to have been taken at least as Rs.10,000/- per month, keeping in view the claim set up in the claim petition that apart from working as a 'mason' he was also working as a 'contractor'.

Apart from the issue with regard to the quantum of monthly income having been assessed, counsel for the parties are otherwise ad idem that the compensation amount awarded vide impugned award dated 07.08.2014 would require to be re-visited and reassessed in the light of the guidelines/parameters laid down by the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77*** and ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

Counsel for the parties have been heard.

It may be noticed that the claimants in the claim petition had asserted that deceased was a 'mason' (Raj Mistri) and was also working as a 'building contractor' and used to earn Rs.20,000/- per month. No documentary evidence, however, was adduced on record to substantiate such assertion.

Be that as it may, it cannot be discounted that the deceased was working as a 'mason'. Rather this Court would be inclined to believe the version set up on behalf of the claimants that the deceased was in addition to working as a 'mason' was also a 'contractor'. Such inference is being drawn on the basis that FIR in this case was registered on the date of the accident itself and in which also it stands recorded that the deceased was working as a 'contractor'. This is the first version recorded on behalf of the claimants in relation to the accident and there would be no basis for this Court to disbelieve the same. Claimants had also examined Suresh Pal as PW-3 who deposed that deceased was doing the work of mason for the last 22 years and used to take back Rs.500/- per day as his labour being doing masonry work on contract basis.

The Tribunal has assessed the monthly income of the deceased is Rs.6700/- per month based upon DC rates and upon the deposition and evidence brought forth by Ms. Santosh Kumari, Clerk, DC Office Karnal who proved on record the letter/order dated 21.11.2013 Ex.PW-4/A whereby rates for labourers have been fixed as Rs.6700/- per month.

A 'mason' otherwise would be seen as a skilled labourer. Accident relates to the year 2013. Deceased was managing a family of his wife, unmarried daughter and a minor son. Assumption of monthly income as Rs.6700/- under such circumstances and particularly viewed while computing compensation under a beneficial piece of legislation cannot be considered as fanciful and exorbitant.

No interference in the same as such is warranted.

The Tribunal has awarded 30% increase in income towards future prospects. Against the uncontroverted position of age of the deceased to be 45 years and he being self-employed and increase in income @ 25% instead towards future prospects is awarded by applying the dictum laid down in ***Pranay Sethi's case (supra).***

The Tribunal ought to have been applied the multiplier of 14 as opposed to 13 keeping in view the age of the deceased as per parameters laid down by the Apex Court in ***Sarla Verma's case (supra).*** It is so directed.

Under the conventional heads a total sum of Rs.2,25,000/- has been awarded. This amount would stand scaled down to Rs.70,000/- as per judgment laid down in ***Pranay Sethi's case (supra)*** i.e. Rs.40,000/- towards loss of consortium, Rs.15,000/-towards loss of estate and the like amount of Rs.15,000/- towards funeral expenses.

In view of the above,the compensation amount is re-assessed and calculated as follows:-

Sr. No.	Head	Calculation
1.	Income Rs.6700/- p.m. (as assessed by the Tribunal)	Rs.6700/-
2.	Increase in income 25% towards future prospects	Rs.6700+1675=Rs.8375/-
3.	1/3rd deduction towards personal and living expenses of the deceased	Rs. 8375-2792=Rs.5583/- Rs.5583 x 12=66,996/-
4.	Compensation after applying multiplier of 14	Rs.66,996 x 14= Rs.9,37,944/-=
5.	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.10,07,944/-

It may be noticed that at the stage of issuing notice of motion in FAO No.9229 of 2014, the compensation amount awarded beyond Rs.8.5 lakhs had been stayed.

It is held that the compensation amount would carry interest @ 8% as awarded by the Tribunal from the date of filing of the claim petition till actual realization.

Both the connected appeals are disposed of in the aforesaid terms.

19.09.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No