IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : August 30, 2018

1. FAO No.9557 of 2014 (O&M)

   The New India Assurance Co. Ltd vs Satpal & others

2. FAO No.9564 of 2014 (O&M)

   The New India Assurance Co. Ltd vs Parveen Kumar & others

3. FAO No.1100 of 2015 (O&M)

   Satpal & ors vs Govind Bharti and others

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CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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Present : Mr. RS Madan, Advocate
for the appellant in FAO Nos.9557 & 9564 of 2014 and
for respondent No.4 in FAO No.1100 of 2015.

Ms. Ekta Thakur, Advocate
for the appellants in FAO No.1100 of 2015 and
for respondents No.1 to 3 in FAO No.9557 of 2014 and
for respondents No.1 & 2 in FAO No.9564 of 2014.

Ms. Amandeep Kaur, Advocate
for Mr. Ashwani Talwar, Advocate
for respondents No.5 and 6 in FAO No.9557 of 2014 and
for respondents No.4 & 5 in FAO No.9564 of 2014.

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<u>Ajay Tewari</u>, J (Oral)

This order shall dispose of the aforesaid three appeals since they arise from the same Award involving the same accident. FAO Nos. 9557 of 2014 and 1100 of 2015 which relate to the death of Shanti Devi have been filed by the Insurance Company as well as by the claimants respectively challenging the quantum of compensation, while FAO No. 9564 of 2014 which relates to the death of Vidya Devi has been filed by the Insurance Company averring that if compensation has to be awarded to adult sons, a cut has to be imposed.

Since a very limited point has been raised, further detailed reference to the facts would not be necessary.

As far as FAO No.9564 of 2014 is concerned, counsel for the appellant/Insurance Company cites New India Assurance Co. Ltd v. Vinish Jain (SC) 2018(1) PLR 759 to contend that there would have to be a deduction of 50%. Counsel for the claimants, however, points out that this is a case where the deceased was a home maker and since her income was only notional, there could be no deduction in view of the Division Bench judgment of this Court in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others, 2014(4) RCR (Civil) 895***. Faced with this, counsel for the Insurance Company points out that if deduction could not be made, then by that same logic, future prospects could not be granted, and has relied upon the decision of this Court in Manjit Singh and another Versus Satish Kumar and others, FAO No.355 of 2017, decided on 14.11.2017.

I find merit in both the arguments and consequently hold that on the notional income of the deceased, there can neither be any deduction nor can any future prospects be granted.

Counsel for the claimants, however, points out that in this case there was no proof of age and as per the claim petition as well as the post mortem report, age of the deceased was 55 years but the Tribunal has taken the age as 60 years without there being any evidence of the said fact. Counsel for the Insurance Company is not in a position to deny this.

In the circumstances, age of the deceased is taken as 55 years and the multiplier is increased from 9 to 11. With this modification in the

Award, this appeal stands disposed of.

In FAO Nos. 9557 of 2014 and 1100 of 2015, the deceased was a woman. As per the claimants she was working as a maid servant but since no evidence of that was led, the Tribunal took her to be a home maker and took her income at ₹ 5,000/-. Counsel for the claimants relies upon the decision of this Court in Harpal Kaur and others vs Parmod Kumar and another, FAO No.3680 of 2009, decided on 1.6.2016, where this Court after discussing the decision of the Supreme Court in Lata Wadhwa and others v. State of Bihar and others, reported as 2001(4) RCR (Civil) 673 had taken the income of a home maker at ₹ 9,000/- in the case of accident which took place in 2013. The same amount be taken in this case also. Counsel for the claimants also points out that in the present case, there was no proof of age but in the claim petition it was mentioned that the age of the deceased was 35 years and even in the post mortem report it was found that the age was approximately 35 years but without any reason, the Tribunal took it as 36 years. Counsel for the Insurance Company is not in a position to refute this argument.

In the circumstances, the age is taken as 35 years and the multiplier would, thus, be 16 instead of 15.

Counsel for the Insurance Company, however, points out that even in the present case, there can neither be deduction nor any increase of future prospects. This argument is well accepted.

Counsel for the Insurance Company further points out that under conventional heads, the Tribunal has awarded higher amount and as per the decision of the Supreme Court in National Insurance Company Limited vs Pranay Sethi and others, 2017(4) RCR (Civil) 1009, a sum of

₹55,000/- has to be reduced. Counsel for the claimants is not in a position to deny this. Consequently, I direct that the said amount be deducted from the total compensation amount.

With these modifications in the Award, both these appeals are disposed of.

The statutory amount of ₹25,000/- deposited by the Insurance Company while filing the appeals be remitted back to the executing Court for disbursal to the claimants.

Since the main cases have been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

August 30, 2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No