213.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. FAO-9654-2014 (O&M)
Date of decision:16.04.2018.

RAJWANTI AND ORS ... Appellants

Versus

RAJVIR SINGH AND ORS .... Respondents

II. FAO-5917-2014 (O&M)

SHRI RAM GENERAL INSURANCE COMPANY LIMITED
... Appellant

Versus

RAJWANTI AND ORS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. J.P. Sharma, Advocate,
for the appellants in FAO-9654-2014 and
for respondents No.1 to 5 in FAO No.5917 of 2014.

Mr.Lalit Kumar, Advocate, for
Mr. Ashwani Talwar, Advocate,
for the appellant in FAO No.5917 of 2014 and
for respondent No.3 in FAO No.9654 of 2014.

HARI PAL VERMA, J. *(Oral)*

CM-26720-CII-2014 IN FAO-9654-2014

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 116 days in filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 116 days in filing the appeal is condoned.

CM-16414-CII-2014 IN FAO-5917-2014

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 15 days in filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 15 days in filing the appeal is condoned.

FAO Nos.9654 and 5917 of 2014

This order shall dispose of two appeals i.e. FAO No.9654 of 2014 titled as "Rajwanti and others Versus Rajvir Singh and others" filed by the claimants seeking enhancement of compensation and the cross-appeal i.e. FAO No.5917 of 2014 titled as "Shriram General Insurance Company Limited Versus Smt.Rajwanti and others" filed by the Insurance Company challenging the compensation awarded by Motor Accident Claims Tribunal, Narnaul (for short, "the Tribunal") vide award dated 25.03.2014.

In a claim petition filed under Section 166 of the Motor Vehicles Act, the Tribunal has awarded an amount of ₹14,38,920/- along with interest @ 9% per annum to the claimants on account of death of Yogesh Kumar, aged about 23 years who died in a motor vehicular accident which took place on 27.05.2012.

Learned counsel for the appellant-claimants has argued that the Tribunal, while awarding compensation, has assessed the income of the deceased as ₹5,620/- instead of ₹11,000/- per month and no amount has been awarded to the mother under the head loss of love and affection. The deceased Yogesh Kumar, who died in the accident, was having a good physique and used to earn ₹11,000/- per month from his job as well as from agriculture.

In the cross appeal, learned counsel appearing on behalf of Insurance Company has argued that in view of judgment of Hon'ble Apex Court rendered in ***<u>National Insurance Company Limited Versus Pranay Sethi and others-2017(4) RCR (Civil) 1009</u>***, the claimants are not entitled for addition of 50% towards future prospects. The Tribunal has also wrongly awarded ₹2,25,000/- under the conventional heads. The claimants were entitled for ₹70,000/- as against ₹2,25,000/- granted by the Tribunal. The Tribunal has awarded ₹1 lakh towards loss of love and affection, ₹1 lakh for consortium and ₹25,000/- for funeral expenses. He has further argued that the Tribunal has awarded 50% future prospects whereas considering the age of the deceased and he being self-employed, 40% future prospects were required to be awarded instead of 50%. Similarly, the rate of interest awarded by the Tribunal is 9% whereas in ***<u>Pranay Sethi's case</u>*** (supra), the awardable rate of interest is 7.5%.

I have heard learned counsel for the parties.

The death of Yogesh Kumar in the accident is not in dispute and since the claimants have failed to adduce any evidence regarding the agricultural income of the deceased, the Tribunal has rightly assessed his income as ₹5,620/- per month which is equivalent to the minimum monthly wages prevalent in the relevant year in which Yogesh Kumar died in the accident. As per ***<u>Pranay Sethi's case</u>*** (supra), under the conventional heads, the claimants are entitled for ₹70,000/- (i.e. ₹15,000/- towards loss of estate, ₹15,000/- towards funeral expenses and ₹40,000/- towards loss of consortium). Having recourse to the judgment passed in ***<u>Pranay Sethi's case</u>*** (supra), the compensation to which the claimants are entitled is reassessed in the following manner:-

Heads		**Calculation**
Monthly Income		₹5,620
Future prospects (%age)	40	₹2,248
Total monthly income (monthly income + Future prospects)		₹7,868
Annual income (total monthly income x 12)		₹94,416
Deductions (towards personal expenses of deceased)	1/3	
Annual dependency (Annual income-deduction towards personal expenses of deceased)		₹62,944
Multiplier	18	
Total loss of dependency (annual dependency x multiplier)		₹11,32,992
Conventional heads:		
Loss of Estate		₹15,000
Funeral expenses		₹15,000
Loss of consortium		₹40,000
Total amount of compensation		₹12,02,992
Amount already awarded		₹14,38,920
Amount reduced		₹2,35,928

Since the awardable compensation comes to ₹12,02,992/- and an amount of ₹14,38,920/- has already been awarded by the Tribunal, ₹2,35,928 is required to be reduced.

In FAO No.5917 of 2014 filed by the Insurance Company, this Court passed the following order on 19.08.2014:-

> "Learned counsel for the appellant has raised various issues which require consideration.
>
> Notice of motion for 13.01.2015.
>
> Notice regarding condonation of delay as well.
>
> In the meantime, the recovery beyond ₹12,00,000/- shall remain stayed during the pendency of the present appeal."

In view of this order, recovery beyond ₹12 lakhs was stayed during the pendency of appeal.

Thus, considering the aforesaid order, the claimants are entitled the compensation as tabulated above and if excess amount has been paid to them, they will return the same to the Insurance Company.

With the aforesaid modifications, the appeal filed by the claimants i.e. FAO No.9654 of 2014 is dismissed and the appeal filed by the Insurance Company i.e. FAO No.5917 of 2014 is disposed of.

(HARI PAL VERMA)
JUDGE

16.04.2018
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No