

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 06.09.2018

1. FAO No. 8168 of 2015(O&M)

Smt.Anita and another Appellants

versus

Satyawan and others Respondents

2. FAO No. 112 of 2016(O&M)

Ram DiaAppellant

versus

Satyawan and othersRespondents

3. FAO No. 617 of 2016(O&M)

Smt.Sunita and anotherAppellants

versus

Satyawan and othersRespondents

4. FAO No. 1553 of 2017(O&M)

Satyawan Appellant

versus

Smt.Anita and others Respondents

5. FAO No. 1556 of 2017(O&M)

Satyawan Appellant

versus

Ram Dia and others Respondents

6. FAO No. 1559 of 2017(O&M)

Satyawan Appellant

versus

Smt.Sunita and others Respondents

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.A.K.Singal, Advocate
for the appellants in FAO No. 8168 of 2015.

Mr.Sukhdeep Parmar, Advocate
for the appellant in FAO No. 112 of 2016.

Mr.Ram Bilas Gupta, Advocate
for the appellants in FAO No.617 of 2016.

Mrs.Kiran Bala Jain, Advocate
with Ms.Prabh Sharma, Advocate
for the appellant/s in FAO Nos. 1553, 1556 and 1559 of 2017
and for respondent No.1 in FAO Nos. 8168 of 2015, 112 of
2016 and 617 of 2016.

Mr.Ankur Gupta, Advocate
for the insurance company in all the appeals.

REKHA MITTAL, J.(ORAL)

This order will dispose of six appeals bearing FAO Nos. 8168 of 2015, 112 and 617 of 2016 and 1553, 1556 and 1559 of 2017 as these have emerged out of the same award dated 07.08.2015 passed by the Motor Accident Claims Tribunal, Panipat whereby compensation has been assessed on account of death of Vikas, Giri Raj and Arun Sharma in a motor vehicular accident that took place on 24.11.2012.

FAO No. 8168 of 2015 has been filed by Anita and another for enhancement of compensation on account of death of Vikas, **No.112 of 2016** by Ram Dia qua death of Giri Raj and **No. 617 of 2016** by Sunita and another qua death of Arun Sharma. The remaining three appeals have been preferred by Satyawar, driver of offending truck No. HR-55H-7223.

FAO No. 8168 of 2015

The Tribunal has awarded compensation of Rs. 7,48,707/-
detailed hereunder:-

1. Monthly income of the deceased	Rs. 4000/-
2. Deduction for personal expenses	1/3 rd
3. Multiplier	15
5. Loss of dependency	Rs. 4, 80,060/-
6. Loss of consortium	Rs. 1, 00,000/-
7. Medical expenses	Rs. 1,43, 647/-
8. Funeral expenses	Rs. 25, 000/-

Counsel for the appellants would urge that income of the deceased assessed by the Tribunal is on lower side and needs enhancement. Claimants are entitled to increase in income for future prospects at the rate of 40%.

The application for compensation has been filed by unfortunate parents of deceased Vikas who was 20 years old at the relevant time. The plea of the claimants is that the deceased was a student of B.A. Final at Arya College, Panipat and earning Rs. 10,000/- per month by running a tuition centre at Samalkha. The claimants have produced on record detailed marks card Ex.P-38 and Identity Card of the College, Ex.P-39 to substantiate their plea that the deceased was a college student.

Taking into consideration the minimum wage of an unskilled worker coupled with educational qualification of the deceased, income of the deceased is assessed at Rs.6000/- per month. Claimants shall be entitle to increase in income for future prospects at the rate of 40%. The admissible multiplier is 18 in the light of judgments of Hon'ble the Supreme Court **Smt.Sarla Verma and others v. Delhi Transport Corporation and another** 2009 ACJ 1298, **Munna Lal Jain and another v. Vipin Kumar Sharma and others** 2015(3) SCC(Civil) 315 and **National Insurance Company Limited v. Pranay Sethi and others** 2017 SCC 1270 and

deduction for personal expenses would be 50%. In this manner, loss of dependency is calculated at Rs. 9,07,200/-[(Rs. 6000 x 12 x 18) + (40% future prospects)-(50% deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 30,000/-, namely Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss of estate. The amount of Rs 1,43,647/- towards medical expenses allowed by the Tribunal is affirmed.

Total compensation is Rs.10,80,847/- (Rs.9,07,200/- + Rs. 30,000/- + Rs. 1,43,647/-(medical expenses) and the additional amount is Rs 3,32,140/- (Rs.10,80,847/- - Rs. 7,48,707/-) payable with interest at the rate of 7.5% p.a. from the date of petition till realisation, to be shared by the claimants equally.

The appeal is partly allowed in the aforesaid terms.

FAO-112-2016

The Tribunal has assessed compensation of Rs. 6,05,000/- detailed hereunder:-

1. Monthly income of the deceased	Rs 8000/-
2. Increase in income for future prospects	50%
3. Deduction for personal expenses	1/3 rd
4. Multiplier	5
5. Loss of dependency	Rs. 4, 80,000/-
6. Loss of consortium	Rs. 1, 00,000/-
7. Funeral expenses	Rs. 25, 000/-

In the light of judgment passed in FAO No. 8168 of 2015 hereinabove, claimant shall be entitle to increase in income for future prospects at the rate of 40%. Deduction for personal expenses and multiplier for computing loss of dependency would be 50% and 18 respectively. In this

manner loss of dependency is calculated at Rs.12,09,600/-[Rs.17,28,000/- (Rs.8000 x 12 x 18)]+Rs.6,91,200/-(40% future prospects)- Rs. 12,09,600/- (50% deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimant shall be entitle to Rs. 30,000/-, namely Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss of estate.

Total compensation is Rs.12,39,600/- and the additional amount is Rs.6,34,600/-(Rs.12,39,600 - Rs. 6,05,000) payable with interest at the rate of 7.5% p.a. from the date of petition till realisation.

The appeal is partly allowed in the aforesaid terms.

FAO-617-2016

Sunita, mother of the deceased appeared in the witness box and stated that Arun was studying in B.A.IInd year in Arya College, Panipat. He used to give tuitions in CAD Zonal Academy, Railway Road, Samalkha to the students up to 10th class and getting salary of Rs. 10,000/-per month. The claimants examined Rakesh Sharma, Proprietor CAD Zonal Academy Railway Road, Samalkha to establish their plea that the deceased was working as a tutor in the aforesaid academy at a monthly salary of Rs.10,000/-.

The Tribunal in para 22 of the award, on a detailed consideration of evidentiary value of testimony of Rakesh Sharma has rejected plea of the claimants that deceased was working as a teacher in CAD Zonal Academy and earning Rs.10,000/-per month.

I have carefully gone through findings of the Tribunal in the light of facts elicited in cross examination of Rakesh Sharma-PW4 and find

no reason to differ with findings that testimony of Rakesh Sharma with regard to deceased being engaged as a tutor and earning Rs. 10,000/- per month is not worthy of credence and reliance. Rakesh Sharma neither knew correctly about educational qualification of the deceased nor the institute where he was a student. As per statement of PW1-Sunita, deceased was a student of B.A. IInd year in Arya College, Panipat but on the contrary Rakesh Sharma would state that Arun was a student of B.Sc. 1st year in I.B. College, Panipat. PW4-Rakesh Sharma did not produce any documentary evidence with regard to deceased being employed by the Academy on payment of salary of Rs. 10,000/- per month. In this view of the matter, plea of the claimants that the deceased was earning Rs. 10,000/- per month is not tenable. However, in view of observations made in FAO No. 8168 of 2015 in regard to grant of compensation to parents of deceased Vikas, income of the deceased is assessed at Rs.6000/- per month.

In the light of aforesaid judgment in FAO No.8168 of 2015, claimants shall be entitle to increase in income for future prospects at the rate of 40%. Deduction for personal expenses and multiplier for computing loss of dependency would be 50% and 18 respectively. In this manner, loss of dependency is calculated at Rs. 9,07,200/-[(Rs. 6000 x 12 x 18) + (40% future prospects)-(50% deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 30,000/-, namely Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss of estate.

Total compensation is Rs. 9,37,200 /- and the additional amount is Rs. 3,32,140/- (Rs. 937200/- - Rs. 6,05,060/-) payable with interest at the

rate of 7.5% p.a. from the date of petition till realisation, to be shared by the claimants equally.

The appeal is partly allowed in the aforesaid terms.

FAO Nos. 1553, 1556 and 1559 of 2017

Counsel for the appellant would urge that though the driver was possessing a driving licence but even if he was not possessing a driving licence, the insurance company cannot escape liability to pay compensation and at best, can pray for right of recovery against the insured after payment of compensation to the claimants. In this context, reference has been made to judgments of Hon'ble the Supreme Court **National Insurance Co.Ltd. v. Swaran Singh and others 2004(3) SCC 297** and **Pappu and others v. Vinod Kumar Lamba and another 2018(1) PLR 425.**

Counsel for the insurance company is not in a position to refute contentions of the appellant when examined in the light of aforesaid judgments. That being so, findings of the Tribunal exonerating the insurance company of liability to pay compensation cannot be allowed to sustain and accordingly set aside. As a natural corollary, the insurance company shall be liable to pay compensation to the claimants but would have right of recovery against the insured.

The appeals stand disposed of in the aforesaid terms.

(REKHA MITTAL)
JUDGE

06.09.2018
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No