IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.09.2018

FAO No.8624 of 2015 (O&M)

The New India Assurance Company Ltd. ... Appellant

Versus

Jasbir Kaur and others ... Respondents

FAO No.8625 of 2015 (O&M)

The New India Assurance Company Ltd. ... Appellant

Versus

Jasbir Kaur and others ... Respondents

FAO No.2478 of 2016 (O&M)

Harjit Kaur and another ... Appellants

Versus

Jasbir Kaur and others ... Respondents

FAO No.2479 of 2016 (O&M)

Harjit Kaur and another ... Appellants

Versus

Jasbir Kaur and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. S.S. Sidhu, Advocate
for the insurance company.

Mr. Rajbir Singh, Advocate
for the appellants in FAO Nos.2478 and 2479 of 2016.

Mr. Aminder Singh, Advocate
for respondents No.1 and 2.

Mr. P.S. Guliani, Advocate
for respondent No.3.

****

<u>REKHA MITTAL, J. (Oral)</u>

This order will dispose of FAO Nos.8624 & 8625 of 2015 and 2478 & 2479 of 2016 as these have emerged out of the same accident dated 15.05.2014 in which Gurwinder Singh and Gurpreet Kaur sustained injuries that proved fatal.

FAO Nos.8624 and 8625 of 2015 have been filed by the New India Assurance Co. Ltd. (hereinafter to be referred as 'the insurance company') to assail quantum of compensation assessed in regard to death of Gurwinder Singh and Gurpeet Kaur. FAO Nos.2478 and 2479 of 2016 have been filed by Harjit Kaur and another, parents of deceased Gurpreet Kaur for apportionment of compensation qua death of Gurwinder Singh and Gurpreet Kaur respectively.

FAO No.8624 of 2015

With regard to death of Gurwinder Singh, the Tribunal has assessed compensation of Rs.15,70,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.9000/-
2. Multiplier	18
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.12,96,000/-
5. Expenses on funeral	Rs.50,000/-

6. Medical expenses Rs.2,23,837/-
(rounded of to Rs.2,24,000/-)

Counsel for the insurance company would argue that income of the deceased @ Rs.9000/- per month assessed by the Tribunal is on higher side and needs reduction. It is argued that plea of the claimants that the deceased had been looking after/cultivating land measuring 12 bighas owned by his father and 30 acres on lease from Kartar Singh and Kultar Singh does not find corroboration from any documentary evidence. They have also failed to adduce any evidence that the deceased was doing the business of cattle feed or dairy farming. It is further argued that income of the deceased, in the circumstances, can be assessed on the basis of minimum wage available at the relevant time. Compensation allowed under conventional heads needs to be restricted to Rs.30,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel representing the claimants, on the contrary, has supported assessment of income of the deceased. He would state that claimants are entitled to addition in income for future prospects @ 40%.

The Tribunal, in para 15 of the award, has adverted to plea of the claimants with regard to avocation and income of the deceased. Counsel for the claimants has fairly conceded that there is no documentary evidence available on record with regard to deceased or his family owning land or possession of land of Kartar Singh and Kultar Singh by way of lease.

Claimants have not examined any independent witness to support their claim with regard to deceased cultivating any land, doing the business by selling milk or cattle feed. In this view of the matter, it can safely be held that claimants have failed to adduce satisfactory much less cogent evidence to substantiate their plea with regard to avocation and income of the deceased. Taking a clue from the notification issued by the State of Punjab fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.6500/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. As wife of the deceased also died in the same accident, deduction for personal expenses would be 50%. The multiplier applied by Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.9,82,800/- [(Rs.6500 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

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

Total compensation is Rs.12,36,800/- and compensation awarded by the Tribunal is reduced to the extent of Rs.3,33,200/- (15,70,000 - 12,36,800). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FAO No.8625 of 2015

The application for grant of compensation with regard to death of Gurpreet Kaur has been filed by her parents-in-law.

The Tribunal has awarded compensation of Rs.11,30,000/-, detailed hereunder:-

1. Monthly value of services of the deceased	Rs.5000/-
2. Multiplier	18
3. Loss of dependency	Rs.10,80,000/-
4. Expenses on funeral	Rs.50,000/-

Counsel for the insurance company would urge that as the deceased was daughter in law of the claimants, they are not entitle to get compensation. This plea of the insurance company is not tenable in the light of judgments of this Court **Rani Devi Vs. Sarbati Devi and others, 2017(4) Law Herald 3473, Satnam Kaur Vs. Union of India and another, 2017 AAC 2140** and **Smt. Santosh Jain and another Vs. State of Haryana and others, 2014(33) RCR(Civil) 1.**

The Tribunal has assessed value of services of the deceased at Rs.5000/- per month and the same is affirmed. Had husband of the deceased remained alive, value of her services would have been more than what has been allowed by the Tribunal. The Tribunal has rightly applied multiplier of 18. Accordingly, loss of dependency assessed by the Tribunal cannot be faulted with. However, under conventional heads, claimants shall be entitle to Rs.15,000/- qua funeral expenses. Compensation allowed by the Tribunal is reduced to the extent of Rs.35,000/-. The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FAO No.2478 and 2479 of 2016

Counsel for the appellants would argue that subsequent to passing of award by the Tribunal, a compromise was effected between parents of Gurpreet Kaur and Gurwinder Singh. In view of said compromise, the appellants are entitle to compensation to the tune of 50% both in regard to death of Gurwinder Singh and Gurpreet Kaur.

Counsel representing the claimants in FAO Nos.8624 and 8625 of 2015 would deny if any such compromise was effected between the parties. He has further submitted that even as per the document produced on record, Jasbir Kaur, is not a signatory to the same.

Counsel for the appellants, in reply, would urge that the same is signed by Jasbir Kaur as well.

Be that as it may, the appellants were not a party in the claim proceedings that culminated in award dated 18.09.2015 passed by the Motor Accidents Claims Tribunal, Sangrur (in short 'the Tribunal'). The disputed question of correctness or otherwise of the alleged compromise cannot be decided in appeal. As such, the appeals are disposed of but without prejudice to right of the appellants to take recourse to appropriate remedy in law for enforcement of their right under the alleged compromise. As the appeals have been disposed of on merits, applications for condonation of delay are of academic relevance only.

19.09.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No