IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 8660 OF 2015

DATE OF DECISION: AUGUST 30, 2018

Oriental Insurance Co.Ltd. ....Appellant

Versus

Runa Devi and others ....Respondents

...

FAO NO.274 OF 2016

Runa Devi and others ....Appellants

Versus

Rinkal @ Jaggi (Rinkal Jaggi) and others ......Respondents

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

Present: Mr.Lalit Garg, Advocate for the appellant in FAO No.8660 of 2015.

Ms.Ekta Thakur, Advocate for the appellants in FAO No.274 of 2016.

Mr.Lalit Garg, Advocate for respondent No.3 in FAO No.274 of 2016.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of FAO Nos.8660 of 2015 and 274 of 2016 as both these appeals arise out of award dated 4.7.2015 passed by the Motor Accident Claims Tribunal, Chandigarh.

2. Briefly, it may be noticed that a claim petition was filed

under Section 166 of the Motor Vehicles Act, 1988 (for short the '1988 Act') by the widow, namely, Runa Devi and four minor sons of Rambdhan (since deceased) who died on 12.9.2014 due to injuries suffered by him in an accident that took place on 30.8.2014. In the claim petition, it was averred that the deceased was working as a Security Guard with M/s Gold Wheel Private Limited, Phase I, Industrial Area, Chandigarh and having finished his duty on 30.8.2014 he was proceeding on his bicycle at 10.05 p.m. when he was struck by a car bearing No.CH-01-AB-2956 which was being driven in a rash and negligent manner. Rambdhan suffered multiple injuries and was immediately removed to Government Hospital, Sector 16, Chandigarh in an unconscious condition and was even referred to PGI, Chandigarh. However, he succumbed to his injuries suffered in the accident and died on 12.9.2014. The claimants asserted that the deceased was 50 years of age and was earning Rs.7,355/- per month and was the sole bread-earner in the family. An amount of Rs.50 lakhs was claimed towards compensation.

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

1. Whether deceased Rambdhan died in a motor vehicular accident, which took place due to rash and negligent driving of car No.CH-01-AD-2956 by respondent No.1? OPP
2. Whether the claimants are entitled to get compensation on account of death of deceased Rambdhan in a motor vehicular accident?OPP
3. Whether the respondent No.1 was not holding a valid driving licence at the time of accident?OPR
4. Relief.

4. The Tribunal in the award dated 4.7.2015 returned findings under Issue No.1 in favour of the claimants and held that death of Rambdhan had occurred on account of injuries suffered in the accident on account of rash and negligent driving of the vehicle in question.

5. Insofar as Issue No.2 is concerned, a total compensation amount of Rs.11,97,500/- has been awarded along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. While determining such compensation amount, the Tribunal has accepted the age of the deceased to be 50 years. The monthly income has been assessed to be Rs.7,000/- per month, 1/4th deduction has been made towards personal and living expenses of the deceased and a multiplier of 13 has been applied to assess loss of dependency. That apart, a 30% increase was granted towards loss of future prospects. A sum of Rs.1 lakh has been awarded towards consortium and a sum of Rs.25,000/- for funeral and last rites. The liability to pay the compensation amount has been held to be joint and several between the Insurance Company as also owner/driver of the vehicle.

6. FAO No.8660 of 2015 is at the hands of Oriental Insurance Company Limited. Counsel for the appellant-Insurance Company has confined the scope of the appeal only with regard to quantum of compensation. It has been argued that without there being any clinching evidence having been adduced, the income of the deceased has been assessed merely on surmises and conjectures at Rs.7,000/- per month, whereas it ought to have

been assessed not more than Rs.6,500/- per month which was the minimum wages admissible to an unskilled worker at the relevant point of time. It has been argued that the Tribunal has erred in giving an addition of 30% towards future prospects, whereas in the facts of the case, since the deceased was neither a Government employee nor a permanent employee, no addition to income on such count should have been granted. It has also been argued that the claimants had failed to prove on record the age of deceased to be 50 years and even in the post mortem report, the age had been mentioned as 50 years approximately. Meaning thereby that the age should have been taken as more than 50 years and consequently, a multiplier of 11 as opposed to 13 should have been applied to the multiplicand. It is further urged that even the amount of Rs.1 lakh awarded to the widow towards loss of consortium is much on the higher side.

7. FAO No.274 of 2016 is at the hands of the claimants seeking enhancement of compensation. Learned counsel representing the claimants has argued that the deceased was working as a Security Guard and earning Rs.7,355/- per month and in order to prove such income, the proprietor of the firm Shri Sewa Singh had been examined as PW1, but despite such clinching evidence, the Tribunal has assessed the monthly income to be Rs.7,000/- per month instead of Rs.7,355/- per month. Further argued that the deceased was maintaining a large family of five members i.e. widow and four minor sons and under such peculiar circumstances, the deduction towards personal and living expenses should have been 1/10th of the salary instead of 1/4th

that the Tribunal has made. Learned counsel contends that the Tribunal has not awarded any amount under the head of loss of love and affection and for which Rs.1 lakh each to the minor sons should have been awarded. Yet another submission raised is that the Tribunal has not awarded any amount towards medical treatment/expenses incurred for the period that the deceased had remained admitted in hospital upto his date of death i.e. 12.9.2014.

8. Having heard learned counsel for the parties at length in both the appeals and having also perused the original records of the case that had been requisitioned, this Court is of the considered view that the compensation amount awarded by the Tribunal would require certain adjustments by applying the parameters laid down by the Apex Court in the case of *National Insurance Company Limited v. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*.

9. As regards the monthly income of the deceased is concerned, the claimants had averred in the claim petition that he was earning a sum of Rs.7,352/- per month while working as a Security Guard. Claimants have examined PW1 Sewa Singh who had deposed that he was a service provider and had facilitated the engagement of Rambdhan (deceased) as a Security Guard with M/s Gold Wheel Pvt. Ltd., Plot No.7, Phase I, Industrial Area, UT, Chandigarh on a monthly salary of Rs.7,352/-. PW1 deposed that he was the Proprietor of Sewak Security Services and also produced the original attendance register in which the name of Rambdhan had been duly entered. Needless to observe that as a

service provider, Sewak Security Services must be deducting a small amount every month from the salary of the deceased towards their commission. Under such circumstances, no exception can be made to the assessment made by the Tribunal of the monthly income of the deceased to be Rs.7,000/-.

10. PW2 Runa Devi i.e. the widow has appeared in the witness box and had deposed the age of her husband to be 50 years. Even the post mortem report reflects the age to be 50 years approximately. The Tribunal, as such, has rightly accepted the age of the deceased to be 50 years and has applied the multiplier of 13.

11. The Tribunal has made a deduction of $1/4^{th}$ towards personal and living expenses of the deceased. Such view is, as per guidelines issued by the Apex Court in the case of Pranay Sethi and others (supra) wherein it was held that in a case of 4 to 6 dependents, a deduction of $1/4^{th}$ from the monthly salary be made.

12. The Tribunal has awarded a 30% increase towards future prospects. Admittedly, the deceased was neither in Government service nor on a permanent job. As per Pranay Sethi's case (supra), a person who was self-employed and was in the age of 40 to 50 years, an addition of 25% ought to be granted towards loss of future prospects. It is so directed.

13. The amount awarded by the Tribunal of Rs.1,25,000/.- i.e. Rs.1 lakh towards loss of consortium and Rs.25,000/- towards funeral expenses are now scaled down at Rs.70,000/- i.e. Rs.15,000/- towards loss of estate, Rs.40,000/-towards loss of

consortium and Rs.15,000/- towards funeral expenses. Such deduction is being directed again as per parameters laid down in Pranay Sethi's case (supra).

14. The original records would reveal that the claimants had adduced documentary evidence i.e. Exhibits P4 to P8 i.e. the medical bills towards purchase of medicine etc. amounting to Rs.1143/- that had been incurred on the treatment of the deceased from the date of the accident i.e. 30.8.2014 and upto his death i.e. on 12.9.2014. The Tribunal has completely overlooked the same. The amount reflected in the medical bills Exhibits P4 to P8 i.e. Rs.1143/- rounded off to Rs.1150/- is as such awarded in favour of the claimants.

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

Sr.No.	Head	Amount
1	Monthly income as assessed by the Tribunal	Rs.7,000
2	25% increase towards future prospects	7,000+25%=8,750
3	1/4th deduction towards personal and living expenses of the deceased	8,750-2,180=6,563
4	Compensation after applying multiplier of 13	6,563x12x13=10,23,828
5	Medical bills/treatment charges	Rs.1,150
6	Conventional heads i.e. loss of estate Rs.15,000/-, loss of consortium Rs.40,000/-, funeral expenses Rs.15,000/-	Rs.70,000
7	Total	Rs.10,94,978/-

16. The afore-calculated/ revised compensation amount be

released in favour of the appellants forthwith. The rate of interest granted by the Tribunal in the award dated 4.7.2015 shall remain intact.

17. Appeals are disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

AUGUST 30, 2018
SRM

Note: *Whether speaking/reasoned:* *Yes/No*

Whether Reportable: *Yes/No*