IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 8073 of 2016 (O&M)
Date of Decision: 03.12.2018

Narayani Devi and others

......Appellants.

Versus

Jaswinder Singh and others

...... Respondents.

AND

F.A.O. No. 8074 of 2016 (O&M)

Gulab Devi and others

......Appellants.

Versus

Jaswinder Singh and others

...... Respondents.

AND

F.A.O. No. 8076 of 2016 (O&M)

Rakesh

......Appellant.

Versus

Jaswinder Singh and others

...... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Dheeraj Narula, Advocate
for the appellants (in all the cases).

Service upon respondents no.1 and 2 dispensed with vide order dated 01.03.2018.

Mr. Gopal Mittal, Advocate
for respondent no.3 (in all the cases).

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LISA GILL, J.

This judgement shall dispose of FAO No. 8073 of 2016, FAO No. 8074 of 2016 and FAO No. 8076 of 2016 as all the appeals arise from common award dated 05.04.2016, passed by the learned Motor Accident Claims Tribunal, Sirsa (for short 'tribunal').

Appellant-claimants in FAO No. 8073 of 2016, are the parents and minor brother of Ravi @ Ramesh (deceased). They seek enhancement of compensation awarded by the learned tribunal, vide impugned award dated 05.04.2016, on account of death of Ravi @ Ramesh.

Appellant-claimants in FAO No. 8074 of 2016, who are the parents and unmarried sisters of the deceased Sunil son of Balwant @ Banta Ram seek enhancement of the compensation awarded by the learned tribunal on account of death of his death.

Appellant-claimant-Rakesh in FAO No. 8076 of 2016 seeks enhancement of the compensation awarded by the learned tribunal on account of the injuries received by him in the motor vehicle accident. For the sake of convenience, facts are being extracted from FAO No. 8073 of 2016

Brief facts which are common to all the appeals are that Ravi @ Ramesh, Sunil (both since deceased) and Rakesh Kumar, were returning to village Bakiranwali on 02.04.2014 from Dhingtania on a motorcycle bearing registration no. HR-06-M-2609, driven by Rakesh Kumar at a moderate speed. A tractor trolley bearing registration no. HR-24-N-1706, driven by respondent no.1-Jaswinder Singh, at a high speed and in a rash and negligent manner came from village Bakrianwali side and hit their motorcycle. As a result thereof, Rakesh Kumar fell on the side of the road and received injuries, whereas Ravi @ Ramesh and Sunil came underneath the tyre of the trolley. One Vinod Kumar came on the spot and shifted Ravi @ Ramesh, Rakesh Kumar and Sunil to Ganga hospital, Sirsa. Sunil was declared 'brought dead' and Rakesh Kumar was admitted. Ravi @ Ramesh was referred to a specialised institution but he succumbed to his injuries on the way to Bathinda. FIR No. 119 dated 03.04.2014, under Sections 279, 337, 427, 304-A IPC, Police Station Sadar Sirsa, was registered against respondent no.1, in this respect.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Jaswinder Singh. The said finding of the learned tribunal has attained finality.

Learned tribunal in MACT No. 45 of 2014 (subject matter of FAO No. 8073 of 2016) awarded a total sum of ₹6,15,000/- along with interest @ 7.5 % per annum from the date of filing of the claim petition till realisation of the amount to the claimants. Income of the deceased-Ravi @ Ramesh was assessed as ₹5000/- per month. Deduction of 50% was effected. Multiplier of 18 was applied by the learned tribunal. A sum of ₹25,000/- was awarded towards funeral expenses and ₹50,000/- was awarded on account of love and affection.

Learned tribunal in MACT No. 47 of 2014 (subject matter of FAO No. 8074 of 2016) awarded a total sum of ₹6,15,000/- along with interest @ 7.5 % per annum from the date of filing of the claim petition till realisation of the amount to the claimants. Income of the deceased-Sunil son of Balwant @ Banta Ram was assessed as ₹5000/- per month. Deduction of 50% was effected. Multiplier of 18 was applied by the learned tribunal. A sum of ₹25,000/- was awarded towards funeral expenses and ₹50,000/- was awarded on account of love and affection.

Learned tribunal in MACT No. 46 of 2014 (subject matter of FAO No. 8076 of 2016) awarded a total sum of ₹31,460/- along with interest @ 7.5 % per annum from the date of filing of the claim petition till realisation of the amount to the claimant on account of the injuries received by Rakesh in the motor vehicle accident.

Learned counsel for the appellants submits that the deceased-Ravi @ Ramesh was 17 ½ years old at the time of the accident, studying in 10+2. The deceased-Sunil son of Balwant @ Balwant Ram was 21 years old at the time of the accident, also studying in 10+2. Both Ravi @ Ramesh and Sunil used to help their respective fathers in agriculture work and household affairs. Increase in income on account of future prospects has not been afforded by the learned tribunal and income of both the deceased has been wrongly assessed as ₹5000/- p.m., which is even lessor then the minimum wage available to an unskilled labourer at the time of the accident. It is further submitted that meagre compensation has been awarded under the conventional heads. It is, thus, prayed that compensation awarded to the appellants in FAO No. 8073 of 2016 and FAO No. 8074 of 2016, be enhanced.

Learned counsel for the appellant further submits that compensation of ₹31,460/- awarded to the claimant-Rakesh Kumar in FAO No. 8076 of 2016, on account of injuries received by him is woefully insufficient and needs to be enhanced.

Learned counsel for the respondent-Insurance Company in all the appeals, while refuting the above arguments, submits that compensation has been reasonably assessed by the learned tribunal and there is no scope for any further enhancement. Learned counsel prays for dismissal of all the appeals.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

<u>FAO No. 8073 of 2016.</u>

There is no dispute regarding age of the deceased-Ravi @ Ramesh i.e. 17 ½ years, at the time of the accident, his date of birth being 09.06.1996. Copies of the middle examination and Adhar-Card are available on record. Thus, he was approximately 18 years old at the time of accident. Learned tribunal has erred in assessing income of the deceased as ₹5000/- because even, the minimum wages of an unskilled labourer in the State of Haryana at the time of accident were ₹5677/-. Therefore, income of the deceased is assessed as ₹5677/- instead of ₹5000/-. Furthermore increase in income on account of future prospects at the rate of 40% is required to be awarded keeping in view the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009**. Deduction of 50 % is correctly effected and multiplier of 18 has been correctly applied by the learned tribunal. Claimants are entitled to a sum of ₹15,000/- each on account of funeral expenses and loss of estate instead of ₹25,000/- for funeral expenses. Finding of the learned tribunal in respect to the minor brother not being entitled to loss of dependency etc., as he was dependent on his father and upon his brother, is upheld. It is however directed that the minor brother-appellant no.3 as well as appellants no.1 and 2 shall be entitled to a sum of ₹40,000/- each in terms of the judgement of Hon'ble Supreme Court in **Magma General Insurance**

Company Limited Vs. Nanu Ram @ Chuhuru Ram and others, Civil Appeal no. 9581 of 2018, arising out of SLP (Civil) No. 3192 of 2018, decided on 18.09.2018.

Compensation towards the claimants on account of death of Ravi @ Ramesh in FAO No. 8073 of 2016, is thus re-worked as under:-

1.	Total income of deceased	₹5677/- p.m
2.	Deduction of 50 % on account of personal expenses	₹5677/– (₹5677*50%=₹2839/-) = ₹2839/-
3.	Total income after addition of future prospects at the rate of 40%	₹2839/- (₹2839+ ₹1136/-) i.e. ₹3975/-
4.	Annual dependency after applying multiplier of 18	₹3975/- x 12 x 18= ₹8,58,600/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Filial consortium to claimant no.1 and 2 i.e. mother and father of the deceased	₹80,000/-
8.	Consortium to appellant no.3 i.e. minor brother of the deceased	₹40,000/-
	Total Compensation =	**₹10,08,600/-**

Claimants in FAO No. 8073 of 2016 shall be entitled to interest on the compensation amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say the amount, if any, already disbursed to the claimants shall stand deducted.

Apportionment of amount of compensation amongst claimants in FAO No. 8073 of 2016 shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

<u>FAO No. 8074 of 2016.</u>

There is no dispute regarding age of the deceased-Sunil i.e. 21 years, at the time of the accident, his date of birth being 20.10.1993. Copy of the secondary examination of the deceased-Sunil is available on record. Thus, he was approximately 21 years old at the time of accident. Minimum wages of an unskilled labourer in the State of Haryana at the time of accident were ₹5677/- thus assessing income of the deceased as ₹5000/- by learned tribunal is unjustified. Therefore, income of the deceased is assessed as ₹5677/-. Furthermore, increase in income on account of future prospects at the rate of 40% is required to be awarded keeping in view the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009**. Deduction of 50 % is correctly effected and multiplier of 18 has been correctly applied by the learned tribunal. Claimants are entitled to a sum of ₹15,000/- each on account of funeral expenses and loss of estate instead of ₹25,000/- for funeral expenses. Finding of the learned tribunal in respect to the sisters not being entitled to loss of dependency etc., as they were dependent on his father, is upheld. It is however directed that the sisters i.e. appellant no.3, 4 as well as parents i.e. appellants no.1 and 2 shall be entitled to a sum of ₹40,000/- each in terms of the judgement of Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others, Civil Appeal no. 9581 of 2018, arising out of SLP (Civil) No. 3192 of 2018, decided on 18.09.2018**.

Compensation towards the claimants on account of death of Sunil in FAO No. 8074 of 2016, is thus re-worked as under:-

1.	Total income of deceased	₹5677/- p.m

2.	Deduction of 50 % on account of personal expenses	₹5677/– (₹5677*50%=₹2839/-) = ₹2839/-
3.	Total income after addition of future prospects at the rate of 40%	₹2799/- (₹2799+ ₹1136/-) i.e. ₹3975/-
4.	Annual dependency after applying multiplier of 18	₹3975/- x 12 x 18= ₹8,58,600/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Filial consortium to claimant no.1 and 2 i.e. mother and father of the deceased	₹80,000/-
8.	Consortium i.e. ₹.40,000/- each to appellants no.3 and 4	₹80,000/-
	Total Compensation =	**₹10,48,600/-**

Claimants in FAO No. 8074 of 2016 shall be entitled to interest on the compensation amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say the amount, if any, already disbursed to the claimants shall stand deducted.

Apportionment of amount of compensation amongst claimants in FAO No. 8074 of 2016 shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

FAO No. 8076 of 2016.

There is no dispute regarding receipt of injuries by appellant-Rakesh Kumar in this accident. While, it is admitted that no permanent disability was suffered by the claimant-appellant, there is no denial that he suffered multiple injuries and remained admitted in the hospital from 02.04.2014 till 05.04.02014. As per testimony of PW-3-Dr. Ramesh Chand Dudi, Ganga Hospital, Sirsa, claimant remained admitted in the hospital w.e.f., 02.04.2014 to 05.04.2014. He received multiple injuries on various parts of his body including head, upper lip, both knees and fracture of the right shoulder. Compensation on account of medical expenses incurred as assessed by the learned tribunal on the basis of medical bills to the tune of ₹21,460/- is maintained. However, instead of consolidated sum of ₹10,000/- for pain and suffering, special diet and transportation, the claimant is entitled to a sum of ₹25,000/- on account of pain and suffering, ₹8000/- towards special diet, besides ₹5000/- each towards attendant and transportation charges. Thus, he is entitled to a total sum of ₹64,460/- on account of the injuries received by him in the motor vehicle accident.

Claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say the amount, if any, already disbursed to the claimant shall stand deducted.

With the abovesaid modification in the amount of compensation, all three appeals are disposed of.

[LISA GILL]
Judge

03.12.2018
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.