

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision : 10.12.2018

228 FAO-912-2016 (O&M)

Deepak Ahuja

....Appellant

vs.

Shri B.K.Paitandy and others

....Respondents

228-A FAO-1897-2017 (O&M)

Smt. Mani Devi and others

....Appellants

vs.

Shri B.K.Paitandy and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Saurabh Dalal, Advocate
 for the appellant in FAO-912-2016
 for respondent No.2 in FAO-1897-2017.

Mr. Sandeep K Sharma, Advocate
for the appellant in FAO-1897-2017
for respondents No. 3 to 8 in FAO-912-2016.

Mr. Sanjeev Goyal, Advocate
for respondent No.2-insurance company in FAO-912-2016.
for respondent No.3-insurance company in FAO-1897-2017.

AJAY TEWARI, J. (Oral)

FAO-912-2016

This appeal has been filed by the driver of the car against the
finding of the Tribunal granting recovery rights to the insurance company.

On 15.10.2018, the following order was passed:-

“Counsel for respondent No. 2 seeks an opportunity to verify the correctness of the licence.

Adjourned to 10.12.2018. Photocopy of this order be placed on the connected matter.”

Today, counsel for the respondent No.2 has very fairly stated that licence of the appellant is genuine. In the circumstances, the appeal is allowed and the recovery rights granted by the Tribunal are set aside.

CM-6261-CII-2017 in FAO-1897-2017

For the reasons recorded, the application is allowed. Delay of 198 days in refiling the appeal is condoned subject to the condition that in case the appeal is allowed and enhancement is made the applicants-appellants would not be entitled to any interest for the period of delay.

FAO-1897-2017

This appeal has been filed by the claimants against the award dated 24.12.2015 passed by Motor Accident Claims Tribunal, Rohtak awarding compensation of Rs. 15,56,000/- alongwith interest at the rate of 7.5% per annum on account of death of Rameshwar in an accident, which took place on 05.04.2014..

Notice of motion.

Since liability of the insurance company is not disputed, service upon respondents No.1 and 2 is exempted.

On the asking of the Court, Mr. Sanjeev Goyal, Advocate appearing in accompanying appeal accepts notice on behalf of respondent No.3-insurance company.

Counsel for the appellant has firstly argued that after the death of the deceased even the family pension was reduced by Rs. 2000/- and after applying the deduction of 3/4th, Rs. 1,500/- more should be awarded towards income. I find merit in this argument and consequently award Rs. 1,500/- more to income.

Counsel for the appellants has argued that in view of the Constitution Bench judgment of the Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, 25% future prospects has to be granted. Counsel for the respondent No.3 is not in a position to deny this fact. Consequently, I award 25% future prospects.

Counsel for the appellants has further argued that under the conventional heads only an amount of Rs. 35,000/- has been awarded whereas once the Tribunal has itself considered 5 dependents each of them had to be awarded Rs. 40,000/- per head on account of consortium/filial consortium, in view of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram 2018 (4) RCR (Civil) 333*** and Rs. 30,000/- for loss of estate and funeral expenses, in view of ***Pranay Sethi (supra)***. Consequently, I award another amount of Rs. 1,95,000/- under the conventional heads.

Counsel for the appellant has further pointed out that in the judgment of ***Magma General Insurance Company Limited (supra)*** the Supreme Court has awarded interest at the rate of 12% per annum on the entire compensation. In view of this judgment, I award 12% interest per annum on the enhanced compensation from the date of filing of the claim petition till the date of payment.

Apart from the individual amounts, out of the enhanced compensation 60% would go to the appellant No.1 and 10% each would go to the respondents No. 3 to 6.

The appeal stands disposed of with the abovesaid modifications. Rest of the award shall remain same.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

10.12.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No