IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.308 of 2017 (O&M)
Date of Decision : 05.12.2018

New India Assurance Company Ltd.

....Appellant

VERSUS

Darshana & others

...Respondents

FAO No.3170 of 2017 (O&M)

Darshana & others

....Appellant

VERSUS

Azad Singh & others **...Respondents**

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Vinod Gupta, Advocate for the appellant in FAO No.308 of 2017 and for respondent No.3 -Insurance Company in FAO No.3170 of 2017.

Mr. Kuldeep Sheoran, Advocate for the appellants in FAO No.3170 of 2017 and for respondent Nos.1 to 5 in FAO No.308 of 2017.

Mr. K. Vardhan Verma, Advocate for respondent Nos.6 and 7 in FAO No.308 of 2017.

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B.S. WALIA, JUDGE (ORAL)

1. This order shall decide FAO No.308 of 2017 filed by the New India Assurance Company, seeking reduction of compensation awarded on account of death of Balraj, while FAO No.3170 of 2017 has been filed by the claimants/family members of the deceased Balraj, seeking enhancement of the compensation awarded.

2. Deceased Balraj died in a motor vehicular accident while driving a tractor on 7.11.2015. The learned Motor Accidents Claims, Tribunal, (hereinafter referred to as 'the Tribunal) took into account the age of the deceased as 45 years, treated him as a Labourer, assessed his monthly income at ₹9000/-, applied multiplier of 14, by making deduction of 1/4th of the income of the deceased towards his personal expenses and further by taking 30% of the established income of the deceased for computing future prospects and by awarding ₹4,00,000/- on account of loss of love and affection to four children of the deceased, ₹1,00,000/- on account of loss of consortium and ₹25,000/- towards funeral expenses, awarded total compensation of ₹20,37,000/-.

3. Learned counsel for the Insurance Company contended that 25% not 30% of the established income of the deceased was liable to be added on account of future prospects, no amount was payable towards loss of love and affection, ₹1 Lakh awarded to wife on account of loss of consortium was liable to be scaled down to ₹40,000/- besides ₹25,000/- awarded on account of funeral expenses was also liable to be scaled down to ₹15,000/-.

4. Learned counsel for the claimants, on the other hand, contended that admittedly, the deceased was a tractor driver and could not have been treated as an unskilled labourer and that as per the notification issued by the Govt. of Haryana for the relevant period, monthly wages for a tractor driver was Rs.9237/-. Therefore, the income of the deceased was liable to be treated as Rs.9237/-. Copy of the notification providing Rs.9237/- as minimum wages for the relevant period in the State of Haryana duly signed by learned counsel for the appellant/claimants is taken on record and copy supplied to learned counsel for the respondent-Insurance Company. Learned counsel for the respondent-Insurance Company on perusal of the same, does not dispute the income of the deceased at ₹9237/- per month. Accordingly, the income of the

deceased is taken as ₹9237/- per month rounded off to ₹9250/- per month. Learned counsel for the claimants further contended that no amount had been awarded on account of loss of estate. Besides the children of the deceased were also entitled to award of compensation on account of loss of parental consortium.

5. As regards the plea for addition of 25% of the established income of the deceased instead of 30% on account of future prospects, it needs mention here that as per paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others-2017(4) RCR (Civil) 1009** where the deceased is between the age of 40 to 50 years, 25% of the established income less tax component is to be taken into account towards future prospects.

Since, in the instant case, the deceased was 45 years of age and was employed as tractor driver, therefore 25% of the established income of the deceased minus the tax component is to be taken into account towards future prospects.

6. As regards the plea for award of appropriate compensation on account of conventional heads, it needs noticing that as per paragraph No.61(viii) of the decision in **Pranay Sethi's** case (supra), a sum of ₹15,000/- is payable on account of funeral expenses, likewise, on account of loss of estate besides ₹40,000/- on account of loss of consortium.

7. However, Hon'ble the Supreme Court in paragraph No.8.7 of its decision in **Magma General Insurance Co. Ltd vs, Nanu Ram Alias Chuhru Ram,** in Civil Appeal No.9581 of 2018, decided on 18 September, 2018, was pleased to hold that children of the deceased were entitled to award of compensation on account of loss of parental consortium.

8. However, as per decision in **Vimla Devi & ors. Versus National Insurance Company Limited & ors.** in Civil Appeal No.11042

of 2018, decided on 16, November, 2018, Hon'ble the Supreme Court was pleased to cap the limit on account of loss of consortium payable to the widow and two children of the deceased at ₹1,00,000/-

9. Accordingly, in the light of decision of Hon'ble the Supreme Court in **Vimla Devi's** case (supra), the appellant-claimants i.e wife and four minor children of the deceased are held entitled to award of ₹1,00,000/- on account of loss of spousal/parental consortium. Likewise, in terms of paragraph No.61(viii) of the decision in **Pranay Sethi's** case (supra), the appellants are held entitled to ₹15,000/- on account of loss of estate and ₹15,000/- on account of funeral expenses. However, no amount is payable on account of loss of love and affection since as per decision of Hon'ble the Supreme Court in **Pranay Sethi's** case (supra), there is no head for payment of compensation on account of loss of love and affection.

10. Accordingly, in the light of the position as noted above, the plea of the Insurance Company as well as claimants is partly accepted and the claimants are held entitled to the following compensation:

Sr. No.	**Head**	**Amount assessed by Tribunal in ₹**	**Amount assessed by this Court in ₹**
1	Monthly Income	9,000/-	9,250/-
2	Addition towards future prospects	3,000/-	25% of 9,250/-=2312.5 rounded off to 2313/-
3	Total income assessed	9000+3000= 12,000/-	9250+2313= 11563
4	Deduction towards personal expenses of deceased.	1/4th of 12,000/-= 3,000/-	1/4th of 11563/-= 2891
5	Dependency	12000-3000/-= 9,000/- per month	11563-2891= 8672/- per month
6	Multiplier applied	14	14
7	Compensation	9000x12x14=15,12,000/-	8672x12x14=14,56,896/-

	awarded		
8	Loss of love and affection	4,00,000/-	Nil
9	Funeral expenses	25000/-	15000/-
10	Loss of estate	Nil	15,000/-
11	Loss of consortium to wife	1,00,000/-	1,00,000/- consolidated loss of consortium to wife and four children
12	Total	20,37,000/-	15,86,896/-

11. Accordingly, in the light of the position as noted above, the claimants are held entitled to the award of compensation of ₹15,86,896/- as against compensation of ₹20,37,000/- awarded by the learned Tribunal along with interest @ 9% per annum on the enhanced amount with effect from the date of claim petition till date of payment less amount, if any, already paid.

12. Needless to mention, tax liability, if any, on the future prospects awarded, shall be deducted in accordance with the decision in **Pranay Sethi's** case (supra).

13. Accordingly, FAO No.308 of 2017 filed by the Insurance Company and FAO No.3170 of 2017 filed by the claimant-appellants are partly allowed to the extent as noted above by modifying the award dated 19.10.2016 passed by the learned MACT, Hisar.

14. Needless to mention, apportionment of the compensation payable to the appellant-claimants in FAO No.3170 of 2017 shall be made as indicated in the award passed by the learned Tribunal.

(B.S. WALIA)
JUDGE

December 05, 2018
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No