

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 05.02.2018

1. FAO No.4756 of 2017

National Insurance Company Ltd.

..... Appellant

Versus

Rajwanti and others

..... Respondents

2. FAO No.295 of 2018

Rajwanti and others

..... Appellants

Versus

Jagtar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S. Sidhu, Advocate
for the appellant (in FAO-4756-2017).

Mr. Vivek Goyal, Advocate
for the respondents (in FAO-4756-2017).

ANIL KSHETARPAL, J. (ORAL)

These are two cross appeals. One filed by the Insurance Company and second filed by the claimants which have come up for hearing together. Counsel for the parties waived notice.

Learned counsel for the Insurance Company has submitted that there was delay of 49 days in filing the FIR. However, a reading of the judgment passed by the Motor Accident Claims Tribunal shows that delay of 49 days has been well explained. The accident took place on 06.06.2015 and medical ruka was sent on the same day i.e. on 06.06.2015. It is further not in dispute that the police after investigation had already presented the

challan against the driver of the offending vehicle i.e. Jagtar Singh.

Next argument of learned counsel is that the deceased was 50 years old as found by the Court and therefore on account of future prospects, the Court has added 30% of the income whereas as per the judgment passed by the Constitution Bench in the case of Pranay Sethi, it can only be 10%. He has further submitted that in absence of any proof of income, the Court ought to have taken the minimum wages as prescribed by the Government which comes to Rs.7,400/- whereas the income assessed is Rs.9,000/-.

On the other hand, learned counsel for the claimants has submitted that the Hon'ble Constitution Bench has held that between the age of 40 to 50, future prospects can be awarded to the extent of 25% of the income whereas between 50 to 60, it has to be 10%. He has submitted that once 50 is coming on both the categories, then it must be assumed that if the age of the deceased is proved to be beyond 50 then the table of 10% future prospects would apply.

This Court has carefully heard the argument of learned counsel for the parties. In the present case, in absence of any evidence, the deceased has been assumed to be an unskilled worker. In these circumstances, learned Court committed an error in assessing the income at Rs.9,000/- which cannot be beyond Rs.7,400/-.

With regard to second submission, it will be noticed that the Court has taken the age of the deceased as 50 on the basis of post-mortem report. Even in the claim petition, the claimants have also claimed that the age of the deceased was 50 years. However, there is no evidence that age is more than 50.

In these circumstances, in absence of any evidence that the deceased was not hale and hearty, the increase awarded with respect to the future prospects is reduced to 25% from 30%. Hence, the compensation is re-worked as under:-

<i>Heads</i>	<i>Compensation awarded by MACT, Kurukshetra</i>	<i>Compensation awarded by High Court</i>
Income	Rs.9,000/-	Rs.7400/-
+ Future prospects	(30%) Rs.2700/- 9000 + 2700 = Rs.11700/-	(25%) Rs.1850/- 7400 + 1850 = Rs.9250/-
Annual Dependency	11,700 X 12 = 140,400/-	9,250 X 12 = 1,11,000/-
- 1/3 rd Deduction	140,400 – 46,800 = 93,600	111,000 – 37,000 = 74,000
Multiplier	93,600 X 13 = 12,16,800/-	74,000 X 13 = 9,62,000/-
Funeral expenses	Rs.25,000/-	Rs.15,000/-
Loss of estate	Rs.10,000/-	Rs.15,000/-
Loss of love and affection	Rs.10,000/-	Nil
Consortium	Rs.10,000/-	Rs.40,000/-
Total Compensation awarded	Rs.12,71,800/-	Rs.10,32,000/-

Appeals are disposed of in the manner indicated above. Resultantly, FAO No.4756 of 2017 is partly allowed whereas FAO No.295 of 2018 is dismissed.

05.02.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No