IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 2803 of 2018 (O&M)
Date of Decision : 19.12.2018

United India Insurance Company Ltd. ....Appellant

Versus

Rupinder Kaur and others .....Respondents

2. FAO No. 4064 of 2018 (O&M)

Rupinder Kaur and others ....Appellants

Versus

Anmol Rattan and another .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ram Avtar, Advocate
for the appellant in FAO-2803-2018 and
for respondent no. 2 in FAO-4064-2018.

Mr. Yogesh Gupta, Advocate
for appellants in FAO-4064-2018 and
for respondent no. 1 to 3 in FAO-2803-2018.

Surinder Gupta, J.

Motor Accident Claims Tribunal, SAS Nagar, Mohali (later referred to as 'the Tribunal') vide award dated 27.10.2017 allowed compensation of ₹19,45,000/- for death of Gurinder Singh (later referred to as 'the deceased'), in a motor vehicle accident with car bearing registration no. PB-37E-8169 (later referred to as 'the offending vehicle')

2. Two separate appeals have been filed against the award, one by Insurance Company (FAO-2803-2018) and the other by claimants (FAO-4064-2018).

3. As the issue involved is only *qua* the quantum of compensation, detailed facts of the case are being skipped for the sake of brevity.

4. The Tribunal computed the compensation awarded to claimants as follows:-

(i)	Monthly income assessed	₹10000 per month
(ii)	An addition of 50% of (i) actual salary to be added towards future prospects	(₹10000+ ₹5000)= ₹15000 per month
(iii)	1/3rd of (ii) above deducted towards personal expenses	(₹15000- ₹5000) = ₹10000 per month
(iv)	Compensation after multiplier of '15' is applied	(₹10000X12X15) = ₹1800000
(v)	Loss of consortium (claimant no. 1)	₹100000
(vi)	Loss of love and affection to the remaining claimants	₹20000
(vii)	Funeral expenses	₹25000
Total		**₹1945000**

5. Learned counsel for the Insurance Company has argued that in the absence of any evidence regarding the business of the deceased, the Tribunal has committed grave error by taking his monthly income as ₹10,000/-, which is higher than the minimum wages prescribed in February, 2017 for a skilled worker by the State Government. As per law settled by Hon'ble Apex court in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009***, 40% addition in income of the deceased could be made towards loss of future prospects while the Tribunal has made addition of 50% on this score. Claimants are entitled to compensation of ₹70,000/- under the conventional heads, which has been allowed by the Tribunal as ₹1,45,000/-.

6. Learned counsel for claimants while conceding that addition in income of the deceased towards loss of future prospects is to be made as per law settled by Hon'ble Apex Court in case of ***Pranay Sethi (supra)***, has argued that the Tribunal has applied multiplier of 15 while calculating amount of compensation while the deceased was 34 years of age and the

multiplier applicable is 16. About income of the deceased, he has argued that it was proved on file that he was looking after the agriculture as his mother was owning land. He was also owning two vehicles i.e. one Toyota Innova and one Toyota Etios. The car Toyota Etios was a commercial vehicle, which he was using as a taxi and was having income from that car. He also employed one Gurdeep Singh (PW-3) as driver on that car and was paying ₹8000/- to him as salary. This show that the deceased was having sufficient income and the Tribunal has committed error while assessing his income as ₹10,000/- per month.

7. Refuting the argument advanced by learned counsel for claimants on the issue of income of the deceased, learned counsel for the Insurance Company has argued that though the deceased owned two cars but he was neither an income tax payee nor evidence has been produced with regard to his monthly income. After his death income from the land of his mother was not affected and cars also remained with his family, as such, claimants cannot seek any enhancement in income of the deceased on this score.

8. While assessing income of the deceased, the Tribunal has looked into evidence on record. It was proved that he was having two vehicles i.e. one Toyota Innova and one Toyota Etios in his name. The second car i.e. Toyota Etios was a tourist vehicle on which he had employed Gurdeep Singh as driver on monthly salary of ₹8000/-. Though, there is no documentary evidence on record to prove employment of Gurdeep Singh as driver but statement of Gurdeep Singh, who appeared as PW-3, cannot be discarded particularly when the second vehicle of the deceased was a tourist vehicle and he required the services of some driver to drive the same. It was also proved on record that mother of the deceased owns land as shown in

jamabandi (Ex. P-16 to Ex. P-23) and the vouchers of sale of produce of that land (Ex. P-13 to Ex. P-15) were in the name of the deceased. I agree with learned counsel for Insurance Company that land of mother of the deceased and his cars are still with his family but at the same time the family has lost services being rendered by the deceased to look after the land and the vehicles. The salary of such person cannot be equated with a labourer or a daily wager. The Court while assessing income of such a person has to use guess work. No doubt the deceased was not filing any income tax return still his income can be taken below income tax level but not necessarily as a daily wager.

9. Keeping in view all these facts and circumstances and evidence on record, I am of the considered opinion that the Tribunal has committed error while assessing monthly income of the deceased as ₹10,000/-. The same is enhanced to ₹15,000/- per month.

10. As per law settled by Hon'ble Apex Court in case of ***Pranay Sethi (supra)***, claimants are entitled to 40% addition in income of the deceased towards future prospects. The deceased was 34 years of age and the multiplier attracted in this case is 16. Claimants are also entitled to compensation of ₹70,000/- under the conventional heads.

11. In view of above discussion, compensation to which claimants are entitled, works out to be as follows:-

(i)	Income of the deceased	₹15000 per month
(ii)	40% of (i) above added towards future prospects	(₹15000+ ₹6000)= ₹21000 per month
(iii)	1/3rd of (ii) above deducted towards personal expenses	(₹21000- ₹7000) = ₹14000 per month
(iv)	Compensation calculated after applying the multiplier of 16 in view of age of the deceased	(₹14000X12X16) = ₹2688000

(v)	Compensation towards loss of consortium	₹40000
(vi)	Compensation towards loss of estate	₹15000
(vii)	Compensation towards funeral expenses	₹15000
Total		**₹2758000**

12. As a sequel of my discussion above, the appeal **(FAO-4064-2018)** filed by claimants has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of **Gurinder Singh** is enhanced from **₹19,45,000/-** to **₹27,58,000/-**. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of instant appeal till actual realization. The Insurance Company being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. Claimants will share the enhanced amount of compensation as per award.

13. The share of claimant-appellant No. 2, who is minor, will be deposited in some nationalized bank as fixed deposit till the period she attains majority. It is, however, made clear that the bank may take the documents regarding age of minor as required at the time of deposit of the amount and they shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in her name after the date of her attaining majority. The above direction has been issued to save claimants from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after attaining the age of majority. Claimant-appellant no. 1-Rupinder Kaur, being mother and natural guardian of minor claimant shall be entitled to get interest on the share of minor deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of her (minor daughter)

brought up.

14. In the event of demise of any of the claimants before or after disbursement of amount of compensation, his/her share shall be paid to surviving claimants.

15. The appeal **(FAO No. 2803 of 2018)** filed by insurer of the offending vehicle i.e. United India Insurance Company Ltd. has no merit and the same is dismissed.

December 19, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*