IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO-7667-2017 (O&M)

National Insurance Co. Ltd.

..... Appellant

Versus

Neha and others

..... Respondents

1. FAO-1855-2018

Neha and others

..... Appellants

Versus

Pandayan and others

..... Respondents

Date of decision: 23.04.2018

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Amit Jaiswal, Advocate
for the appellant (in FAO-7667-2017) and
for respondent No. 3(in FAO-1855-2018).

Mr. UK Agnihotri, Advocate
for the appellants (in FAO-1855-2017) and
for respondents No. 1 to 5 (in FAO-7667-2017).

RAMENDRA JAIN, J. (ORAL)

1. Through this common judgment, above titled two appeals are being disposed of i.e. one filed by the Insurance Company (FAO-7667-2017) for reduction and other by the claimants for enhancement of compensation, against the impugned Award dated 29.08.2017 of the Motor Accident Claims Tribunal, Ambala (for short-'the Tribunal'). For brevity, the facts are being extracted from FAO-7667-2017.

2. Put pithily, claimant-respondents No. 1 to 5 filed a claim petition under Section 166 of the Motor Vehicles Act, against respondents No. 6 and 7, driver and owner of the offending truck bearing registration No. TN-28-AR-4068, impleading the appellant-Insurance Company being insurer of the said truck. It was pleaded that on the intervening night of 27/28.08.2016 around 2.00 A.M., Krishan Kumar, husband of respondent No. 1, died in a motor vehicular accident, while he was returning to his village Shyamtoo on motorcycle bearing registration No. HR-03-N-0377, caused by the offending truck being driven by respondent No. 6 in a rash and negligent manner. At the time of his death, deceased-Krishan Kumar was earning around ₹ 30,000/- by selling toys, gifts and plastic items. After holding trial and considering the overall facts and circumstances, the learned Tribunal, taking the income of the deceased at ₹ 10,520/-in view of an administrative order passed by the Deputy Commissioner, Ambala for the year 2016-17, awarded compensation to tune of ₹ 24,80,000/- to the claimant-respondents No. 1 to 5 along with interest @ 9% per annum from the date of filing of petition till realization, which was computed as follows:-

(i)	Name of the deceased	Krishan Kumar
(ii)	Age of the deceased	38 years
(iii)	Income of the deceased	₹10,520/-
(iv)	50% addition towards future prospects	₹10520+5260=₹15,780/- per month
(v)	Deduction towards personal expenses 1/4th	₹15780-3945=₹11,835/-
(vi)	Multiplier applied	11835x12x15=₹21,30,300/-
(vii)	Loss of love and affection to claimants No. 2 to 4 (minor children)	₹1,00,000/- each i.e. ₹3,00,000/-

(viii)	Loss of love and affection to claimant No. 5 (mother)	₹25,000/-
(ix)	Funeral expenses	₹25,000/-
	Total	₹24,80,300 i.e. ₹24,80,000/- (round figure).

It is pertinent to mention here that the learned Tribunal, had not awarded any compensation to respondent No. 1-Neha under the head of loss of consortium as she performed marriage, after the death of Krishan Kumar.

3. Learned counsel for the appellant-Insurance Company contends that there was no iota of evidence on the record regarding income of the deceased. Even no evidence was brought on record by claimant-respondents No. 1 to 5 that deceased-Krishan Kumar was a diploma holder or at least matriculate having some special skills to earn his livelihood. 50% towards future prospects have also wrongly been added in view of judgment of Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.*** The learned Tribunal has also erred in granting ₹3,50,000/- under the conventional heads i.e. ₹1 lakh each to three minor children of the deceased i.e. respondents No. 2 to 4, ₹ 25,000/- to respondent No. 5-Maya (mother of the deceased) towards loss of love and affection and ₹25,000/- for funeral expenses whereas the same could not have been awarded more than ₹70,000/- in view of ***Pranay Sethi and other's case (supra).***

4. On the other hand, learned counsel for claimant-respondents No. 1 to 5 vehemently opposed the submissions made by learned counsel for the appellant-Insurance Company. There was documentary evidence qua the income of the deceased, therefore, the learned Tribunal has erred in

assessing income of the deceased at ₹10,520/- per month. Relying upon judgments of Hon'ble the Supreme Court in ***(i) Sayed Sadiq Etc. Vs. Divisional Manager, United India Ins. Co., 2014(1) RCR (Civi) 765; (ii) Sanjay Kumar Vs. Ashok Kumar and another, 2014(1) RCR (Civil) 875; (iii) V. Mekala Vs. M. Malathi and another, 2014(11) SCC 178*** and of this Court in ***(iv) IFFCO Tokio General Insurance Company Ltd. Vs. Suman Rani and others, 2016(2) RCR (Civil) 488,*** learned counsel for claimant-respondents No. 1 to 5, has prayed for enhancement of compensation by taking the income of the deceased at ₹30,000/- per months.

5. This Court has given anxious consideration to the submissions made by learned counsel for both the parties.

6. Krishan Kumar-deceased was claimed to be a toy, gifts and plastic items seller by claimant-respondents No. 1 to 5. His father, Raj Kumar as PW-1 in his cross-examination testified that his deceased son was selling toys in fairs. Apart from the oral testimony qua alleged income of the deceased at ₹30,000/- per month, the claimant-respondents No. 1 to 5 did not lead any cogent and convincing evidence or in the shape of any documentary evidence. They even did not lead any evidence from whom the deceased used to purchase toys, gifts and plastic items for selling to earn his livelihood. No bill, receipt or cash memo was produced by the claimants in support of their assertion about the alleged income of the deceased. Therefore, in the considered opinion of this Court, his income could not have been taken beyond the wages of a skilled workman in the absence of any evidence. However, the learned Tribunal, considering the school fee

receipt of two minor children of the deceased Ex. P-18 and Ex. P-19, found that the deceased was paying ₹3500/- per month towards school fee. The learned Tribunal has also considered three FDRs of the deceased Ex. P-14 to Ex. P-16, totaling ₹1,02,000/- in between the span of 18 months during the period 2014-2015, much prior to his death, which shows that the deceased must be earning a handsome income and was able to deposit around ₹5700/- (approx.) per month towards his savings. Meaning thereby, that the deceased used to deposit around ₹5700/- per month towards his savings and was making payment of ₹3500/- per month towards school fee of his children, which comes to around ₹9200/- per month.

7. A judicial note of the fact can be taken that a person can only save and spend that much, when he may be earning double o the above amount to meet out his day-to-day expenses. In the instant case as discussed above, ₹9200/- per month was spent by the deceased on education of his children and towards savings. Therefore, his income can easily be taken as double of the same i.e. ₹18,400/- per month, inasmuch as without earning so much, it is not possible for a person to pull on his life and maintain his family properly with such a saving. Considering this aspect of the matter, the income of the deceased is assessed as ₹18,500/- per month.

8. As per the law settled by Hon'ble Apex Court in ***Pranay Sethi and other's case (supra),*** the claimants are entitled to 40% addition in the income of the deceased towards future prospects, instead of 50% as granted by the Tribunal. The tribunal has awarded compensation of ₹3,50,000/ under the conventional heads, which is to be restricted to ₹ 70,000/-. As the claimants are 5 in number therefore, 1/4th has to be

deducted from the income of the deceased towards personal expenses. The deceased was aged about 38 years, therefore, multiplier of 15 has to be applied. Keeping in view the above discussion, the compensation to which the claimants are entitled, is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased	₹18500/- per month
(ii)	40% of above (i) to be added as future prospects	(18,500+7400)= ₹25900/-
(iii)	Deduction of 1/4th towards personal expenses of the deceased	(25900-6475)=₹19,425/-
(iv)	Compensation after multiplier of 15 is applied	(19425x12x15)=₹34,96,500/-
(v)	Compensation under conventional heads i.e. loss of estate, loss of consortium, funeral expenses etc.	₹70,000/-
	Total	₹35,66,500/-

9. The facts and circumstances of the cases relied upon by learned counsel for claimant-respondents No. 1 to 5 are not identical to the facts of this case, therefore, no benefit of the same whatsoever can be given to them.

10. As a sequel of my discussion above, the impugned Award dated 29.08.2017 is modified and the compensation is enhanced from ₹24,80,000/- to ₹ 35,66,500/- (rupees thirty five lakhs, sixty six thousand five hundred only). The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. The appellant-Insurance Company is directed to deposit enhanced amount of compensation with the learned Tribunal, within a period of two months' from today for onward disbursement to claimant-respondents No. 1 to 5, against proper receipt and identification, in

accordance with law.

11. Both the appeals bearing FAO-7667-2017 (National Insurance Company Ltd. Vs. Neha and others) and FAO-1855-2018 (Neha and others Vs. Pandayan and others) stand disposed of, accordingly.

April 23, 2018 **(RAMENDRA JAIN)**
rishu **JUDGE**

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