209 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

1. **FAO-1605-2003**

Date of Decision: 29.10.2019

Maya Devi

.....Appellant

Versus

Shadi Ram and another ....Respondents

2. **FAO-1606-2003**

Chameli

.....Appellant

Versus

Shadi Ram and another ....Respondents

3. **FAO-1607-2003**

Sumitra Devi

.....Appellant

Versus

Shadi Ram and another ....Respondents

4. **FAO-1608-2003**

Rishi Kumar

.....Appellant

Versus

Shadi Ram and another ....Respondents

5. **FAO-1609-2003**

Anguri Devi

.....Appellant

Versus

Shadi Ram and another ....Respondents

6. **FAO-1610-2003**

Jaswant Singh and others

.....Appellants

Versus

Shadi Ram and another ....Respondents

7. **FAO-1611-2003**

Kanta Devi and others

.....Appellants

Versus

Shadi Ram and another ....Respondents

8. **FAO-1612-2003**

Hari Mal and another

.....Appellants

Versus

Shadi Ram and another ....Respondents

9. **FAO-1613-2003**

Udai Ram and others

.....Appellants

Versus

Shadi Ram and another ....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Prithvi Raj Yadav, Advocate, for the appellants.

Mr. Ashwani Talwar, Advocate and
Mr. Jagjit Singh Chatrath, Advocate
for respondent No.2-Insurance Company.

NIRMALJIT KAUR, J. (ORAL)

All the above mentioned appeals shall decided by this common order, as same are arising out of the common award.

FAOs-1605-1606-2003

In FAO-1605-2003, while praying for enhancement, learned counsel for the appellants submitted that the injured was 44 years of age and had suffered grievous injuries including head injury. As per the medical report, there was contusion at the occipital region, general condition was poor, respiration was difficult and lungs were congested and urinary output was nil but only ₹ 5,000/- was granted, whereas, the amount awarded should be enhanced towards loss of income, special diet, attendant charges, transportation charges, medical expenses and pain and suffering.

Similarly while arguing FAO-1606-2003, learned counsel for the appellants submitted that there was head injury as well as injury on the arm and face and the patient was in serious condition, but nothing was awarded except ₹ 5,000/-. Therefore, the amount deserves to be enhanced under all the heads mentioned above.

Learned counsel for the Insurance company while opposing the appeals submitted that there was no disability. No medical bill has been placed on record and there is no evidence on record to show the expenses incurred by the appellants under any of the heads and therefore, they are not entitled to any further enhancement.

Heard.

However, taking into account the MLR Ex.PW5/1 as well as the statement of Dr. Ajay Kumar Gupta PW-1, this Court has no doubt that some expenses must have been incurred by the appellants for the injuries as mentioned above. Therefore, the amount towards loss of income, special diet, attendant charges, transportation charges, medical expenses and pain and suffering can be enhanced by granting a lump sum amount of ₹ 10,000/- to each of the appellants. The same shall be paid to the appellants within a period of two months from the receipt of certified copy of this order alongwith 6% interest per annum from the date of filing of claim petition. In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

FAOs-1607, 1608 & 1610-2003

While praying for enhancement, learned counsel for the appellants submitted that the compensation awarded by the Tribunal is on the lower side. The injured suffered grievous injuries, which are duly mentioned in their respective medical reports. Dr. Ajay Kumar Gupta appeared as PW-1 and stated that operation was carried out in all the above three cases and as much as ₹ 2,00,000/- was incurred by the appellants towards the operation. It is further stated that no amount has been granted towards loss of income, special diet, attendant charges, transportation charges, medical expenses and pain and suffering and only a small amount of ₹ 22,500/-, ₹ 25,000/- and ₹ 34,875/- respectively has been granted in above mentioned three cases. It is further stated by learned counsel for the appellants that in FAO-1610-2003 total eye was damaged as per the statement of PW-1 Dr. Ajay Kumar Gupta.

Learned counsel for the Insurance Company while vehemently opposing the same submitted that there was no evidence on record and there was no disability. No such evidence has been placed on record. In fact, there is no disability at all. Therefore, the amount already granted is fair and just. No further enhancement can be granted.

However, taking into account the evidence of the doctor as well as injuries as described in the respective medical reports, this Court has no reason to doubt that at least ₹ 50,000/- each must have been incurred by each of the injured in their respective medical treatment. Similarly, the present appellants are also entitled to the enhancement to the extent of ₹ 10,000/- each as lump sum towards loss of income, special diet, attendant charges, transportation charges, medical expenses and pain and suffering.

Accordingly, the amount is enhanced to ₹ 60,000/- to each of the appellants, which shall be paid to the appellants within a period of two months from the receipt of certified copy of this order alongwith 6% interest per annum from the date of filing of claim petition. In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

FAO-1609-2003

The case of the appellant is similar to FAO-1607, 1608 & 1610-2003 as mentioned above except that in this case there is 7.5% disability as well. Accordingly, appellant is entitled to another amount of ₹ 15,000/- towards the said disability and 50,000/- towards medical treatment. Accordingly, award qua the present appellant is modified by granting a sum of ₹ 75,000/- in total over and above already granted.

FAO-1612-2003

While praying for enhancement, learned counsel for the appellants submitted that the income should have been assessed at least ₹ 3,000/- per month instead of ₹ 1,250/- per month. Future prospects should have been granted @ 25% and no deduction should have been applied as the deceased was a house wife, whereas the multiplier of 15 should have been applied taking into account the age of the deceased.

Learned counsel for the Insurance company has pointed out that at that point of time the income of a skilled labourer was ₹ 2,000/- per month, but does not dispute that claimants are entitled to the future prospects @ 25% as also multiplier should be of 15. Learned counsel for the Insurance Company has also very fairly submitted that consortium too can be taken as ₹ 70,000/- instead of ₹ 10,000/- in view of the judgment rendered by Hon'ble the Apex Court in the case of National Insurance Company Ltd. versus Pranay Sethi and others, (2017) 16 SCC 680. It is however stated that deduction should be applied in case the notional income is being taken into consideration.

After hearing learned counsel for the parties, this Court is of the opinion that income should be assessed ₹ 2,000/- per month taking into account that the deceased was a lady and house wife as per the well settled proposition of law rendered by the Hon'ble Apex Court in the case of Lata Wadhwa and others vs. State of Bihar and others, (2001)8 SCC 197. The same is accordingly assessed as ₹ 2,000/- per month. In view of the admitted position qua the future prospects, the appellant-claimants are entitled future prospects @ 25% with multiplier of 14 taking into account that the age was 45 years. Similarly, amount under the head of consortium is enhanced to ₹ 70,000/- instead of ₹ 10,000/-. This Court is not in agreement for applying the deduction in view of the fact that the deceased in the present case was a house wife and contribution towards the family was about 100%.

In view of the above, the compensation is now re-assessed as per the calculation provided under:-

Sr. No.	Head	Amount assessed
1	Income	2000/-
2	Future prospects @ 25%	2000 + 500 = 2500/-
3	Loss of dependancy and multiplier of 14	2500 x 12 x 14 = 4,20,000/-
4	Conventional head	70000/-
	Total	4,90,000/-
	Awarded by the Tribunal	1,60,000/-
	Enhanced amount	3,30,000/-

Thus, the enhanced compensation of ₹ 3,30,000/- be paid to the appellants within two months from the receipt of certified copy of this order alongwith 6% interest per annum from the date of filing of claim petition. In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

FAO-1613-2003

Praying for enhancement, learned counsel for the appellants submitted that the age of the deceased was wrongly considered as 57 years, whereas, she was 44-45 years of age as per PW-8 and there was no cross-examination of the said witness. It is further stated that the age could not be 57 years as the age of the husband was 53 years and her children were also small. Enhancement of compensation is also prayed towards the assessment of income. It is stated that income should have been at least ₹ 3,000/- per month taking into account that the deceased was a house wife. Future prospects should be @ 25% as also consortium to be ₹ 70,000/- instead of ₹ 10,000/-.

Learned counsel for the Insurance Company although agreed that the income assessed by the Tribunal is on the lower side but admitted that it should be ₹ 2,000/- per month taking into account the minimum wages existing at that point of time. He also does not dispute that the future prospects should be @ 25% as also the consortium should be ₹ 70,000/- instead of ₹ 10,000/-.

There is merit in the argument qua the age. Accordingly, taking into account the age of the deceased as 45 years as per PW-8 and as 57 years as per PMR, this Court safely assesses the age to be 50 years. Since, enhancement under the other heads is not disputed, the award is accordingly modified qua the present claimants in this appeal by assessing income ₹

2,000/- per month, future prospects @ 25%, consortium ₹ 70,000/- and multiplier of 13 taking into account the age of the deceased as 50 years.

In view of the above, the compensation is now re-assessed as per the calculation provided under:-

Sr. No.	Head	Amount assessed
1	Income	2000/-
2	Future prospects @ 25%	2000 + 500 = 2500/-
3	Loss of dependancy and multiplier of 13	2500 x 12 x 13 = 3,90,000/-
4	Conventional head	70000/-
	Total	4,60,000/-
	Awarded by the Tribunal	2,59,600/-
	Enhanced amount	3,40,000/-

Thus, the enhanced compensation of ₹ 3,40,000/- be paid to the appellants within two months from the receipt of certified copy of this order alongwith 6% interest per annum from the date of filing of claim petition. In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

<u>FAO-1611-2003</u>

In view of the exhaustive arguments in the above appeals, learned counsel for the parties are agreed that in this case income of the deceased is to be assessed ₹ 2,400/- per month by applying multiplier of 16 with deduction as 1/4th and future prospects @ 40% taking into account the age of the deceased as 35 years. Further, consortium should be ₹ 70,000/- instead of ₹ 10,000/- already granted.

Accordingly, the compensation is now re-assessed as per the calculation provided under:-

Sr. No.	Head	Amount assessed
1	Income	2400/-
2	Future prospects @ 40%	2400 + 960 = 3360/-
3	deduction @ 1/4th and multiplier of 17	3360 x 12 x ¾ x 16 = 4,83,840/-
4	Conventional head	70000/-
	Total	5,53,840/-
	Awarded by the Tribunal	2,59,600/-
	Enhanced amount	2,94,240/-

Thus, the enhanced compensation of ₹ 2,94,240/- be paid to the appellants within two months from the receipt of certified copy of this order alongwith 6% interest per annum from the date of filing of claim petition. In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

(NIRMALJIT KAUR)
JUDGE

29.10.2019
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No