IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-2788-2002(O&M)

Ram Kumar

...Appellant

Versus

Surender and others

...Respondents

(2) FAO-2789-2002(O&M)

Smt.Bimla Devi and others

...Appellants

Versus

Rajinder Harijan and others

...Respondents

Date of Decision:-30.10.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: None for the appellant in FAO-2788-2002.

Mr.Ramesh Sindhar, Advocate
for the appellants in FAO-2789-2002.

Mr.Abhishek Goyal, Advocate for
Mr.Pardeep Goyal, Advocate
for the insurance company.

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H.S. MADAAN, J.(ORAL)

By this order, I shall dispose of two FAOs i.e. FAO-2788-2002 filed on behalf of appellant – Ram Kumar and FAO-2789-2002 filed on behalf of appellants – Smt.Bimla Devi and others, which have arisen out of the same accident.

Briefly stated, the facts of the case as per version of the claimants are that on 20.12.1999 at about 6:30 a.m., deceased Dhan Raj and Mahinder Singh along with Ram Kanwar, Smt.Bimla, Sunil Dutt and Anup Singh were travelling in a jeep going from village Kheri Damkan towards Sonepat; the jeep was being driven by respondent No.4 – Surinder; in the meanwhile a truck bearing registration No.HR-46-B-0101 (hereinafter referred to as the offending truck) being driven by respondent No.1 – Rajinder in a rash and negligent manner came from the opposite direction and it struck against right side of the jeep with the result the jeep turned turtle towards the left hand side on kacha portion; all he occupants of the jeep suffered injuries; all the injured were taken to Civil Hospital, Gohana, however Dhan Raj and Mahinder Singh succumbed to the injuries; formal FIR No.330 dated 20.12.1999 for the offences under Sections 279/337/304-A IPC was registered regarding the accident.

The legal representatives of deceased Dhan Raj, namely his widow Smt.Urmila Devi, minor sons – Jai Deep and Ravi Dutt, father – Sh.Chand Ram and mother - Smt.Chhoto had brought a claim petition bearing MACT Case No.108 of 2001 against respondents i.e. Rajinder Harijan – driver, Suresh – owner and New India Assurance Company Ltd. insurer of the offending truck as well as Surinder – driver, Ram Niwas and Om Parkash – owners and New India Assurance Company Ltd. - insurer of the jeep bearing No.HR-46-A/4390, claiming compensation to the tune of Rs.10 lakhs.

Petitioner Ram Kumar had brought a claim petition bearing MACT Case No.109 of 2001 against the above-said respondents, claiming compensation to the tune of Rs.2 lakhs on account of injuries suffered by him in the motor vehicular accident.

The legal representatives of deceased Mahinder Singh, namely his widow – Smt.Bimla Devi, minor daughter – Baby Sheetal Rani aged about 12 years and minor son – Master Gobind, aged about 8 years had also brought a claim petition bearing MACT Case No.110 of 2001, claiming compensation to the tune of Rs.10 lakhs.

Since all the claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Sonepat (hereinafter referred to as the Tribunal).

After hearing arguments, the claim petitions were allowed partly by the Tribunal vide award dated 10.10.2001. Petitioners Smt.Urmila Devi and others, who had filed MACT Case No.108 of 2001 were awarded compensation of Rs.5,18,784/-, petitioner Ram Kumar, who had filed MACT Case No.109 of 2001 was awarded compensation of Rs.11,961/- and petitioners Smt.Bimla Devi and others, who had filed MACT Case No.110 of 2001 were awarded compensation of Rs.2,01,600/- along with interest at the rate of 9% per annum from the date of filing of the petitions till final realization payable by respondents No.1 to 3 jointly and severally, whereas respondents No.4 to 7 were absolved of any liability to pay compensation. The detailed directions with regard to apportionment and mode of payment of compensation were given in the award passed by the Tribunal.

Claimants Smt.Bimla Devi and others of MACT Case No.110 of 2001 and claimant Ram Kumar of MACT Case No.109 of 2001 were dissatisfied with the compensation awarded to them and they have filed separate appeals before this Court seeking enhancement of compensation.

Notice of the appeals was issued to the insurance company, which put in appearance through counsel.

The cases are quite old. Learned counsel who had been appearing for the appellant in FAO-2788-2001 has not put in appearance despite issuance of notice to him, whereas notice sent for the service of appellant Ram Kumar has been received back unserved for the reason that he is not available at the given address. Therefore, I proceed to decide both the appeals after hearing the counsel present in the Court and going through the record.

Firstly taking up FAO No.2788 of 2002 filed on behalf of appellant/claimant Ram Kumar. It needs to be mentioned here that the Tribunal on the basis of evidence produced before it has come to the conclusion that the accident in question had taken place on account of rash and negligent driving of the offending truck by respondent No.1 Rajinder Harijan. This finding is proper and appropriate and does not call for any interference. It being so, the driver, owner and insurance company of the offending truck are definitely liable to pay compensation to Ram Kumar, who had suffered injuries in the accident as well as legal representatives of the deceased, say legal representatives of Mahinder Singh namely Smt.Bimla Devi and others.

Now coming to the quantum of compensation awarded to Ram Kumar, who as per his version was employed as Senior Auditor in Ministry of Defence at monthly salary of Rs.6,300/-. According to his version, he had spent a sum of Rs.50,000/- on his medical treatment and he remained hospitalized for about 47 days. The Tribunal took into consideration the medical bills produced by him as Ex.P5 to Ex.P18 to the tune of Rs.1,961/- and granted that sum to him towards medical treatment. However, the Tribunal has lost sight of the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept and at times those get misplaced or lost. Thus, the compensation under that head is enhanced to Rs.2,500/-.

The Tribunal has granted a sum of Rs.10,000/- for pain and sufferings. However, under various other heads like charges for attendant, special diet, transportation charges etc. no compensation has been given. The compensation awarded is on the lower side and it deserves to be enhanced. Therefore, the same is enhanced to Rs.40,000/-.

The total compensation comes out to Rs. 42,500/-(40,000 + 2500).

The Tribunal has awarded compensation of Rs.11,961/-.

In this way, the enhanced amount comes out to Rs.30,539/- (42,500 - 11,961). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs. 30,539 /-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

Now coming to **FAO-2789-2002** filed by appellants/claimants Smt.Bimla Devi and others with regard to death Mahinder Singh, statedly running a milk dairy and earning Rs.10,000/-

per month. The Tribunal had assessed his income as Rs.1,800/- per month in view of the minimum wages prevailing at that time. However, no addition on account of future prospects was made. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** keeping in view the age of deceased, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.1800 + 720 = Rs.2,520/-.

The Tribunal has rightly made deduction of 1/3rd towards personal expenses in terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77***. Doing that the dependency of claimants comes out to Rs.1,680/- per month, annual dependency comes out to Rs.1,680 x 12 = Rs.20,160/-.

The Tribunal has used multiplier of 14. However, in view of ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.*** ,when the deceased is in the age group of 36 to 40, multiplier of 15 should be applied. Doing that the compensation payable comes out to Rs. 20,160 x 15 = 3,02,400/-.

The Tribunal has not awarded any amount under the conventional heads. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 3,02,400 + 70,000 = 3,72,400/-.

The Tribunal has awarded compensation of Rs.2,01,600/-.

In this way, the enhanced amount comes out to Rs.1,70,800/- (3,72,400 - 2,01,600). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.1,70,800 /-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

Since the claim petition was filed by Smt.Bimla Devi and others on 11.1.2000 when the age of claimant/petitioner No.2 – Baby Sheetal Rani was 12 years and claimant/petitioner No.3 - Master Gobind was 8 years and 19 years have elapsed therefrom, therefore it comes out that minor claimant No.2 Sheetal Rani, who was aged about 12 years at that time and claimant No.3 Master Gobind, who was aged about 8 years must have attained majority. Therefore, shares of all the claimants be released to them in cash without putting any rider with regard to deposit of part or whole of their shares in the form of FDR with some nationalized bank.

With such modifications, both the appeals are allowed partly.

30.10.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No