IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 15.07.2019

FAO No.1894 of 2008 (O&M)

The United India Insurance Co. Ltd. ... Appellant

Versus

Jyoti and others ... Respondents

FAO No.1896 of 2008 (O&M)

The United India Insurance Co. Ltd. ... Appellant

Versus

Jyoti and others ... Respondents

FAO No.1897 of 2008 (O&M)

The United India Insurance Co. Ltd. ... Appellant

Versus

Bishan Dass and others ... Respondents

FAO No.1898 of 2008 (O&M)

The United India Insurance Co. Ltd. ... Appellant

Versus

Bishan Dass and others ... Respondents

FAO No.1899 of 2008 (O&M)

The United India Insurance Co. Ltd. ... Appellant

Versus

Bishan Dass and others ... Respondents

FAO No.1900 of 2008 (O&M)

The United India Insurance Co. Ltd. ... Appellant

Versus

Jyoti and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjiv Pabbi, Advocate
for the insurance company.

Mr. Pankaj Sharma, Advocate
for claimant-Jyoti.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1894, 1896 to 1900 of 2008 as these have emerged out of the same award dated 19.02.2008 passed by the Motor Accidents Claims Tribunal (FTC), Ropar whereby compensation has been assessed on account of death of Hussan Lal, Surinder Kumari, Munish Kumar, Rajni Bala, Satish Kumari and Charru in a motor vehicular accident that took place on 29.11.2003.

The appeals have been preferred by M/s United India Insurance Company Ltd., insurer of truck No.HP-33-5341 (hereinafter referred to as 'the offending vehicle').

Counsel for the insurance company would inform that the appeals have been filed to assail only quantum of compensation assessed by the Tribunal.

FAO Nos.1894 and 1898 of 2008

CM No.18606-CII of 2017 in FAO No.1898 of 2008

Prayer in this application is for impleading legal representative(s) (in short "LRs") of Bishan Dass-respondent No.1.

In view of averments made in the application supported by an affidavit of Sh. AD Malhotra, Deputy Manager, United India Insurance Company Ltd. and arguments advanced, application is allowed and persons mentioned in para 2 of the application are allowed to be brought on record as LRs of Bishan Dass-respondent No.1 (since deceased), subject to just exceptions, for the purpose of present lis only.

The application is disposed of accordingly.

Amended memo of parties is taken on record.

Main cases

The Tribunal, in regard to death of Hussan Lal, awarded Rs.17,31,000/-, detailed hereunder:-

Annual income of the deceased	Rs.2,00,000/-
Multiplier	13
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.17,29,000/-
Expenses on funeral	Rs.2000/-

Compensation has been apportioned to the tune of Rs.12,00,000/- in favour of Jyoti, married daughter of the deceased and Rs.5,31,000/- to Sh. Bishan Dass, father of the deceased.

Counsel for the appellant would argue that Jyoti is married daughter of the deceased, therefore, she is not entitle to compensation qua loss of dependency. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and another, 2007(2) RCR (Civil) 674** wherein, it has been held, quoted thus:-

> Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act.

In addition, it is argued that even no evidence was adduced that Bishan Dass, father of the deceased was dependent on his income. It is argued that claimants, at best, can be awarded compensation to the tune of Rs.50,000/- under 'No Fault Liability'.

Counsel representing claimant-Jyoti, on the contrary, has supported findings of the Tribunal that claimants are entitle to loss of dependency by applying multiplier method. It is argued that the claimants may be allowed just and reasonable compensation by extending benefit of future prospects and adequate compensation under conventional heads.

The primary issue that falls for consideration is, whether the claimants are entitle to loss of dependency, if not so, what compensation they are entitle to. The claim has been preferred by married daughter and father of the deceased. The deceased was more than 50 years of age as he was born on 19.07.1953 in view of his date of birth recorded in the income tax returns. Father of the deceased would certainly be more than 70 years of age at the time of unfortunate occurrence. There is nothing on record suggestive of the fact that father of the deceased had any source of income at the age of more than 70 years. Jyoti being married daughter of the deceased may not be dependent upon income of the deceased but she would be entitle to substantial amount qua loss of estate.

To be fair to the appellant, counsel has relied upon judgment of Hon'ble the Supreme Court in **Smt. Manjuri Bera's case (supra)**. Perusal of the aforesaid extract from the referred judgment does not lead to a conclusion much less a ratio in law that in case the claim has been preferred by a married daughter, compensation should be restricted to 'No Fault Liability' under Section 140 of the Motor Vehicles Act, 1988 (in short 'the Act') or the same cannot be more than Rs.50,000/- under 'No Fault Liability'. Rather the Court has held that even if there is no loss of dependency, the claimant who is a legal representative will be entitle to compensation the quantum whereof shall be not less than the liability flowing from Section 140 of the Act. Keeping in view the above, interest of justice commands that loss of dependency is calculated by applying cut for personal expenses of the deceased to the tune of 50%. As the deceased was more than 50 years having born on 19.07.1953 and unfortunately died on 29.11.2003, claimants shall be entitle to addition in income for future prospects @ 10%. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.14,30,000/- [(2,00,000 x 13) + (10% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to

Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

Total compensation is Rs.14,60,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.2,71,000/- (17,31,000 - 14,60,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeals filed by the insurance company are partly allowed in the aforesaid terms.

FAO Nos.1896 and 1897 of 2008

With regard to death of Surinder Kumari, the Tribunal awarded Rs.12,45,000/-, detailed hereunder:-

Annual income of the deceased	Rs.1,70,000/-
Multiplier	11
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.12,43,000/-
Expenses on funeral	Rs.2000/-

The Tribunal has assessed income of the deceased on the basis of income tax returns and other documentary evidence on record and the same is affirmed. The claim has been preferred by Jyoti, married daughter and Bishan Dass, father in law of the deceased. In the unfortunate occurrence, Hussan Lal, husband of Surinder Kumari and son of Bishan Dass claimant also passed away. During lifetime of Hussan Lal, Bishan Dass cannot be said to be dependent upon income of his daughter in law Surinder Kumari. Similarly, Jyoti, married daughter of the deceased cannot be said to be dependent on her income. However, the claimants are entitle to substantial amount qua loss of estate by applying multiplier method. In the given scenario, deduction for personal and living expenses of the deceased would be 50%.

The Tribunal has applied multiplier of 11 for computing loss of dependency on the basis of age of the deceased recorded in the postmortem report. Hussan Lal, husband of Surinder Kumari was born on 19.07.1953 and was slightly more than 50 years of age at the time of unfortunate occurrence. Perusal of the income tax returns filed by Surinder Kumari would reveal that column in respect of date of birth of Surinder Kumari is blank. In absence of clear evidence with regard to date of birth of the deceased coupled with her age recorded in the postmortem report, age of the deceased is assessed at 50 years. Claimants shall be entitle to addition in income for future prospects @ 10%. However, admissible multiplier would be 13. In this manner, loss of dependency is calculated at Rs.12,15,500/- [(1,70,000 x 13) + (10% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.15,000/- for funeral expenses.

Total compensation is Rs.12,30,500/- and compensation awarded by the Tribunal is Rs.14,500/- more. As such, assessment made by the Tribunal is kept intact.

The appeals are disposed of in the aforesaid terms.

FAO Nos.1899 and 1900 of 2008

The Tribunal awarded Rs.11,41,000/-, in regard to death of Munish Kumar, aged 22 years, detailed hereunder:-

Annual income of the deceased	Rs.1,00,000/-
Multiplier	17
Deduction for personal expenses	$1/3^{rd}$
Loss of dependency	Rs.11,39,000/-
Expenses on funeral	Rs.2000/-

The compensation has been apportioned between Jyoti, married sister and Bishan Dass, grandfather of the deceased. In view of discussion made hereinbefore, while deciding FAO Nos.1894 and 1896 to 1898 of 2008, claimants are not entitle to compensation qua loss of dependency but they shall be entitle to substantial amount qua loss of estate. In the given circumstances, admissible deduction for personal and living expenses would be 60%. As the deceased was 22 years old, claimants shall be entitle to addition in income for future prospects @ 40% and multiplier of 18. In this manner, loss of estate is calculated at Rs.10,08,000/- [(1,00,000 x 18) + (40% future prospects) – (60% deduction for personal expenses)]

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.15,000/- for funeral expenses.

Total compensation is Rs.10,23,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.1,18,000/- (11,41,000 – 10,23,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeals are partly allowed in the aforesaid terms.

15.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No