IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-5727-2011(O&M)

Reliance General Insurance Co. Ltd.

...Appellant

Versus

Smt.Manita and others

...Respondents

(2) FAO-5407-2011(O&M)

Smt.Manita and others

...Appellants

Versus

Raghubir Singh and others

...Respondents

Date of Decision:-16.11.2019

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

Present: Mr.T.K. Joshi, Advocate
for the appellant in FAO-5727-2011 and
for respondent No.3 in FAO-5407-2011.

Mr.J.P. Sharma, Advocate
for the appellants in FAO-5407-2011 and
for respondents No.1 to 4 in FAO-5727-2011.

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<u>**H.S. MADAAN, J.**</u>

By this order, I shall dispose of two FAOs i.e. FAO-5727-2011 filed on behalf of insurance company and FAO-5407-2011 filed on behalf of the claimants, which have arisen out of the same accident.

Briefly stated, the facts of the case are that since Sh.Vinod son of Sh.Ram Chander, had expired in a motor vehicular accident, which took place on 21.2.2008 at about 12:30 a.m. in the area of near Asawata turn on National Highway No.2, statedly on account of rash and negligent driving of TATA Truck bearing registration No.HR-30F-2859 (hereinafter referred to as the offending truck) by Raghubir Singh – respondent No.1, legal representatives of deceased, namely, his widow – Smt.Manita aged about 22 years, minor daughter – Baby Palak aged 2 about two years, father – Sh.Ram Chander, aged about 50 years and mother – Smt.Kamla, aged about 48 years had filed a claim petition under Section 166 of Motor Vehicles Act against respondents i.e. Raghubir Singh – driver, Naresh Gandhi – owner and Reliance General Insurance Company Ltd., New Delhi – insurer of the offending truck, claiming compensation to the tune of Rs.20 lakhs with interest and cost.

On being put to notice, all the three respondents appeared and contested the claim petition.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as the Tribunal) allowed the claim petition and compensation of Rs.8,32,588/- with interest @ 7.5% per annum from the date of the claim petition till final realization was awarded to the claimants No.1, 2 and 4, whereas claim of petitioner/claimant No.3 Ram Chander was rejected. It was directed that share in the compensation be awarded to petitioners No.1 and 4 in cash, whereas share of minor claimant No.2 – Palak be deposited in the form of FDR with some nationalized bank till she attain the age of majority and this amount would not be withdrawn without the permission of the Tribunal.

The claimants/petitioners in the petition being dissatisfied with the quantum of compensation awarded to them and insurance company being also aggrieved by the award have filed separate appeals before this Court.

Notices of the appeals were issued to the respective respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the evidence brought on file by the parties had come to the conclusion that the accident in which Vinod had suffered injuries to which he had succumbed had been caused due to rash and negligent driving of the offending truck by respondent No.1 – Raghubir Singh. Such conclusion arrived at by the Tribunal is proper and appropriate and does not call for any interference. It being so, the petitioners/claimants Smt.Manita being widow, Baby Palak – minor daughter and Smt.Kamla – mother of deceased were rightly held to be entitled to get the compensation being legal heirs and legal representatives of the deceased from all the three respondents i.e. driver, owner and insurer of the offending truck.

Now coming to the quantum of compensation. The Tribunal had taken the age of deceased to 27 years and his avocation as Constable in Haryana Police. As per the salary certificate proved in the evidence, he was getting salary of Rs.13,370/- per month but the Tribunal fell in error in taking his monthly salary to be Rs.8,447/- per month and even therefrom deducted certain allowances and assess pecuniary loss caused to the family as Rs.6,070/-. The entire approach of the Tribunal in doing so was wrong. Once it was proved on file by the claimants that last drawn pay of deceased was Rs.13,379/- and he had been getting pay to that extent w.e.f. February, 2011, his salary should have been taken as such.

Again the Tribunal omitted to add any amount towards future prospects. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** considering the age of the deceased and that he was in regular service, 50% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs. 13,379 + 6,689 = Rs.20,068/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the number of dependent family members are 2 to 3, deduction towards self-expenses is to be taken as $1/3^{rd}$. Doing that the dependency of claimants comes out to Rs.13,379/- per month, annual dependency comes out to Rs. 13,379 x 12 = Rs.1,60,548/-.

The Tribunal has used multiplier of 17, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,60,548 x 17 = 27,29,316/-.

The Tribunal has further granted a sum of Rs.5,000/- towards loss of consortium and Rs.2,000/- towards last rites. 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. 27,29,316 + 70,000 = 27,99,316/-.

Learned counsel for the insurance company has referred to Apex Court judgment ***Reliance General Insurance Co. Ltd. Versus Shashi Sharma & Ors., 2016(4) RCR(Civil)569*** wherein it was observed that the amount Haryana Compassionate Assistance to the dependents of the Deceased Government Employees Rules, 2006 is to be deducted from amount receivable by the dependents.

As per the statement of RW1 Yogesh Kumar, Pay Clerk, 2nd Battalion, IRB Bhondsi, widow of deceased is entitled to get salary of Rs.13,379/- for the next 15 years as per the instructions issued by the State Government and thereafter, she would be entitled to get family pension.

In that way, the amount can be calculated as 13,379 x 12 x 15 = 24,08,220/-. Deducting that amount from the compensation payable that comes out to Rs.3,91,096/-(27,99,316 - 24,08,220).

The Tribunal has wrongly awarded compensation of Rs.8,32,588/-. The same is reduced to Rs.3,91,096/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.3,91,096 /-. Other terms and conditions regarding apportionment in the original award shall remain the same. The share of the claimants shall be reduced proportionately.

With such modifications, FAO-5727-2011 filed on behalf of Insurance Company is allowed partly with costs.

If the amount of compensation has already been paid by the Insurance company, the claimants shall refund the same to the Insurance Company otherwise the Insurance Company shall be entitled to recover the difference in amount from the claimants as per law by way of filing an execution application before the Tribunal.

There is absolutely no reason to enhance the amount of compensation rather it has been reduced.

Consequently, FAO-5407-2011 filed on behalf of the appellants/claimants stand dismissed with costs.

16.11.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No