IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 6021 of 2011 (O&M)
Date of decision : 15.3.2019
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Smt. Magan Devi and others
................Appellants

vs.

Darshan Singh @ Billu and another
.................Respondents

2) FAO No. 6022 of 2011 (O&M)
...

Smt. Vijay Yadav and others
................Appellants

vs.

Darshan Singh and another
.................Respondents

3) FAO No. 6491 of 2011 (O&M)
...

Smt. Veena Vidyarthi and another
................Appellants

vs.

Darshan Singh @ Billu and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Y.P. Khullar, Advocate for the appellants.

Ms. Madhu Sharma, Advocate for respondent
-Insurance company
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H. S. Madaan, J. (Oral)

By this common judgment, I intend to dispose of three appeals i.e. bearing FAO No. 6021 of 2011 titled as 'Smt. Magan Devi and others vs. Darshan Singh @ Billu and another', FAO No. 6022 of 2011 titled as 'Smt. Vijay Yadav and others vs. Darshan Singh and another' and FAO No. 6491 of 2011 titled as 'Smt. Veena Vidyarthi and another vs. Darshan Singh @ Billu and others', as all the three appeals have arisen out of the same award.

Briefly stated, facts of the case are that on account of death of six persons, namely, Puneet Yadav, Bisham Yadav, Monika Vidyarthi, Master Kanishk Vidyarthi, Ms. Urvashi Vidyarthi and Vishal Vidyarthi, in a motor vehicular accident, which took place on 25.9.2007 at about 5.15 A.M., in the area of near bus stand, village Dau Majra, statedly on account of rash and negligent driving of Truck No. PB-12F/9281, by respondent No.1 Darshan Singh @ Billu, the legal representatives of all the six deceased, had filed petitions under Section 166 of the Motor Vehicles Act, 1988, claiming compensation. In those petitions, they had impleaded Darshan Singh @ Billu – driver-cum-owner and Oriental Insurance Company Ltd., Nangal, District Ropar – Insurer of the truck in question, as respondents.

The respondents had put in appearance and contested the claim petitions. However all the claim petitions were accepted and compensation of Rs.4,16,000/- was awarded in respect of death of Puneet Yadav, Rs.4,70,000/- was awarded in respect of death of

Bisham Yadav and Rs.4,70,000/- was awarded in respect of death of Vishal Vidyarthi, vide consolidated award dated 13.5.2011 passed by Motor Accident Claims Tribunal, Palwal, alongwith interest @ 6% per annum, from the date of petition till realization, finding both the respondents to be liable jointly and severally.

The appellant-claimants being of the view that compensation awarded by the Motor Accidents Claims Tribunal, Palwal, was on lower side, have approached this Court by way of filing separate appeals, notice of which was given to the respondents.

The Insurance company has contested those appeal.

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

<u>FAO-6021-2011</u>

Learned counsel for the appellants has contended that the Tribunal had taken the monthly income of deceased Puneet Yadav, who was aged about 26 years at the time of accident, to be Rs.6,000/- per month. Since deceased was a bachelor and claim petition was filed by his parents, deduction of 50% was made towards his personal expenses. However, no amount was awarded towards future prospects. He has referred to authority ***<u>National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,</u>*** in support of his contention that when the deceased is self employed an addition of 40% of established income is warranted, where the deceased was below the age of 40 years. This contention is not controverted by learned counsel appearing for the Insurance company.

Doing so, the monthly income of the deceased is taken to be Rs.6,000 + Rs.2,400/- = Rs.8,400/- per month. By making deduction of 50% towards personal expenses, the dependency of the claimants is worked out as Rs.4,200/- per month. The annual dependency is worked out to Rs.4200 X 12 = Rs. 50,400/-.

The Tribunal has used the multiplier of 11, considering the age of parents of the deceased. However, in view of ratio of authority ***Pranay Sethi's case (Supra),*** age of the deceased is to be taken into consideration for applying the multiplier and not that of his parents. In ***Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,*** the Hon'ble Supreme Court of India had observed that for age group of 26-30 years, multiplier of 17 should be applied. Doing that, the compensation is worked out to Rs.50,400 X 17 = 8,56,800/-.

The claimants are entitled to get Rs.15,000/- towards funeral expenses and Rs.15,000/- under the Head Loss of Estate, as observed in ***Pranay Sethi's case (Supra).***

Thus the total compensation payable to the claimants comes to Rs.8,86,800/- (Rs.8,56,800 + Rs.30,000).

The Tribunal has awarded a compensation of Rs.4,16,000/- to the claimants. In that way, the claimants are entitled to get additional compensation of Rs.4,70,800/- (Rs.8,86,800 – Rs.4,16,000). The claimant-appellants shall also be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization, the liability of both the respondents being joint and several. Other terms and conditions with regard to apportionment and payment shall remain the same as in the original award.

FAO No. 6021 of 2011 is allowed with costs.

FAO-6022-2011

With regard to death of Bhisham Yadav, learned counsel for the appellants has contended that the Tribunal had taken the monthly income of deceased, to be 1 lakh per annum, by running spare parts shop with the name and style of M/s Yadav Automobiles at Champa Bhawan, GT Road, Palwal and also from business of repairing of refrigerators and air conditioners. The age of the deceased was stated to be 24 years. He was a bachelor. Since deceased was a bachelor and claim petition was filed by his parents, deduction of 50% was made towards his personal expenses. However, no amount was awarded towards future prospects. He has referred to authority ***Pranay Sethi's case (Supra),*** in support of his contention that when the deceased is self employed an addition of 40% of established income is warranted, where the deceased was below the age of 40 years. This contention is not controverted by learned counsel appearing for the Insurance company.

Doing so, the annual income of the deceased is taken to be Rs.1,00,000 + Rs.40,000/- = Rs.1,40,000/-. By making deduction of 50% towards personal expenses, the dependency of the claimants is worked out as Rs.70,000/- per annum.

The Tribunal has used the multiplier of 9, considering the age of parents of the deceased, who are claimants before the

Tribunal. However, in view of ratio of authority ***Pranay Sethi's case (Supra),*** age of the deceased is to be taken into consideration for applying the multiplier and not that of his parents. In ***Smt. Sarla Verma's case (Supra),*** the Hon'ble Supreme Court of India had observed that for age group of 15-25 years, multiplier of 18 should be applied. Doing that, the compensation is worked out to Rs.70,000 X 18 = Rs.12,60,000/-.

The claimants are entitled to get Rs.15,000/- towards funeral expenses and Rs.15,000/- under the Head Loss of Estate, as observed in ***Pranay Sethi's case (Supra).***

Thus the total compensation payable to the claimants comes to Rs.12,90,000/- (Rs.12,60,000 + Rs.30,000). The Tribunal has awarded a compensation of Rs.4,70,000/- to the claimants.

In that way, the claimants are entitled to get additional compensation of Rs. 8,20,000/- (Rs.12,90,000 – 4,70,000). The claimant-appellants shall also be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization, the liability of both the respondents being joint and several. Other terms and conditions with regard to apportionment and payment shall remain the same as in the original award.

FAO No. 4022 of 2011 is allowed with costs.

FAO-6491-2011

With regard to death of Vishal Vidyarthi, learned counsel for the appellants has contended that the deceased who was stated to be aged about 36 years at the time of accident, the Tribunal had taken the income of deceased, as Rs.3,60,000 per annum, from his salary while working as a Production Manager with Hakuhodo Percept Private Limited, Delhi. Though he is shown to have been resigned from that service since was supposed to join duty with M/s Toyota Automotive in Muscat. However, no amount was awarded towards future prospects. He has referred to authority ***Pranay Sethi's case (Supra)*** in support of his contention that when the deceased is self employed an addition of 40% of established income is warranted, where the deceased was below the age of 40 years. This contention is not controverted by learned counsel appearing for the Insurance company.

Doing so, the annual income of the deceased is taken to be Rs.3,60,000 + Rs.1,44,000/- = Rs.5,04,000/-. The claim petition has been filed by parents of the deceased. Though the deceased had wife and children, but unfortunately, they too had expired in the accident. Therefore, by making deduction of 50% towards personal expenses, the dependency of the claimants is worked out as Rs.2,52,000/- per annum.

The Tribunal has used the multiplier of 5 wrongly, considering the age of parents of the deceased, who are claimants before the Tribunal. However, in view of ratio of authority ***Pranay Sethi's case (Supra),*** age of the deceased is to be taken into consideration for applying the multiplier and not that of his parents. In ***Smt. Sarla Verma's case (Supra),*** the Hon'ble Supreme Court of India had observed that for age group of 36-40 years, multiplier of 15 should be applied. Doing that, the compensation is worked out to Rs.2,52,000 x 15 = Rs.37,80,000/-.

The claimants are entitled to get Rs.15,000/- towards funeral expenses and Rs.15,000/- under the Head Loss of Estate, as observed in ***Pranay Sethi's case (Supra).***

Thus the total compensation payable to the claimants comes to Rs.38,10,000/- (Rs.37,80,000 + 30,000). The Tribunal has awarded a compensation of Rs.4,70,000/- to the claimants.

In that way, the claimants are entitled to get additional compensation of Rs. 33,40,000/- (Rs.38,10,000 – Rs.4,70,000). The claimant-appellants shall also be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization, the liability of both the respondents being joint and several. Other terms and conditions with regard to apportionment and payment shall remain the same as in the original award.

FAO No.6491 of 2011 is allowed with costs.

(H.S. Madaan)
Judge

15.3.2019
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No