IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 1467 of 2014(O&M)
Date of Decision: 25.02.2019

Rajbala

......Appellant.

Versus

Juber and others

...... Respondents

AND

F.A.O. No. 1601 of 2014(O&M)

Rajbala and others

......Appellants.

Versus

Juber and others

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Ashish Gupta, Advocate
for the appellants (in both cases)

Mr. Kapil Khanna, Advocate
for respondent no.1 (in both cases).

Mr. Shiva Khurmi, Advocate
for respondent no.2 (in both cases).

Mr. Subhash Goyal, Advocate
for respondent no.3 (in both cases)

*****

LISA GILL, J (Oral).

This order shall dispose of FAO No.1467 of 2014 and FAO No. 1601 of 2014 as both the appeals arise from a common award dated 06.12.2013, passed by the learned Motor Accident Claims Tribunal, Nuh (for short 'Tribunal').

Appellant-claimant in FAO No. 1467 of 2014, seeks enhancement of the compensation awarded by the learned tribunal on account of death of Sunder in a motor vehicle accident which took place on

23.06.2012.

Appellants-claimants in FAO No. 1601 of 2014 i.e. widow, minor children and mother of the deceased-Om Prakash, seek enhancement of the compensation awarded by the learned tribunal on account of death of Om Prakash. For the sake of convenience, facts are being extracted from FAO No. 1467 of 2014.

As per averments in the three claim petitions initially filed under Section 166 of the Motor Vehicles Act (for short 'Act'), Om Prakash son of Chhutmal and his son-Sunder, aged about 9 years, on 23.06.2012 were going to their village Khoh Rajasthan on a motorcycle bearing registration no. HR-36-G-0343, driven by Satpal son of Roshan Lal at a moderate speed. At about 11.30.a.m., when they reached near Mundaka Border, a vehicle bearing registration no. HR-55-M-8720, driven by respondent no.1 in a rash and negligent manner came from behind and struck against their motorcycle. As a result thereof, all the occupants of the motorcycle fell. Om Prakash was crushed under the tyre of the offending vehicle whereas his son Sunder sustained grievous injuries. Injured was shifted to GH Mandikhera, where Sunder succumbed to his injuries. FIR No. 138 dated 23.06.2012, under Sections 279, 337, 304-A IPC, was registered, in this respect.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Juber. Said finding of the learned tribunal has attained finality.

Notional income of the deceased-Sunder (subject matter of

FAO No. 117 of 2012) was assessed as ₹15,000/- per annum. Multiplier of 15 was applied by the learned tribunal. A sum of ₹15,000/- was awarded towards last rites and transportation expenses. Learned tribunal awarded a sum of ₹2,40,000/- along with interest @9% per annum from the date of filing of the claim petition till realisation of the amount to the claimant-Rajbala.

Income of deceased-Om Prakash was assessed as ₹6000/- per month. Deduction of 1/ 4th was effected. Multiplier of 16 was applied by the learned tribunal. A sum of ₹15,000/- was awarded towards loss of consortium to appellant-claimant no.1-Rajbala and ₹50,000/- to claimants-no.2 to 6 (i.e. ₹10,000/- each) towards loss of love and affection. Learned tribunal awarded a sum of ₹9,39,000/- along with interest @9% per annum from the date of filing of the claim petition till realisation of the amount to the claimants.

Learned counsel for the appellant submits that the learned Tribunal has erred in assessing the notional income of the deceased-Sunder to be ₹15,000/- per annum and multiplier of 15 has been wrongly applied. He relies upon the judgment of this Court in **FAO No.3964 of 2014 (Chet Ram and another v. Gautam Kumar and others) dated 21.09.2017**, to submit that notional income of the deceased should at least be assessed as ₹50,000/- per annum. It is thus prayed that the compensation be re-worked accordingly.

Learned counsel for the appellants further argues that income of the deceased-Om Prakash has been wrongly assessed as ₹6000/- per month and increment on account of future prospects be awarded. It is further submitted that meagre compensation has been awarded under the conventional heads. It is, thus, prayed that compensation awarded to the appellants be enhanced in terms of the judgements of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R. (Civil) 1009** and **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others, 2018(4) R.C.R (Civil) 333.**

Learned counsel for respondent No.3 vehemently opposed any enhancement of the compensation awarded by the learned Tribunal while submitting that just and reasonable compensation has been awarded which calls for no enhancement. He relies upon decision of this Court in **FAO No.228 of 2003 (Gian Singh and another v. Suresh and others) dated 21.05.2018**. It is thus prayed that the impugned award dated 06.12.2013 be upheld.

I have perused the files and heard learned counsel for the parties.

FAO No. 1467 of 2014.

Neither liability of respondent No.3 is in dispute nor is there a dispute regarding the accident being caused by the rash and negligent act of respondent No.1 in which Sunder, who was a 9 year old boy lost his life on 23.06.2012. He was admittedly a student of Class IV at the time of his death. This Court in FAO No.3964 of 2014 (Chet Ram and another v. Gautam Kumar and others) dated 21.09.2017 while dealing with a similar matter has assessed the notional income of a deceased student as ₹50,000/- per annum in respect to an accident which took place in the year 2011. Specific reference was made therein to the judgment of the Hon'ble Supreme Court in the case of **Krishan Gopal and another v. Lala and others, 2013(4) RCR (Civil) 276**, wherein notional income of a ten years old child was assessed to be ₹30,000/- per annum. Accident in the said case had occurred in the year 1992. Reference was also made to the decision of the Hon'ble Supreme Court in **Lata Wadhwa v. State of Bihar, 2001(4) RCR(Civil) 673** especially with regard to the Second Schedule to Section 163A of the Act for calculating compensation in case of a victim below 15 years of age. In the case of **Gian Singh and another v. Suresh and others FAO No.228 of 2003**, relied upon by learned counsel for respondent No.3, controversy revolved around the death of a 20 year old unmarried person which occurred in a motor vehicle accident on 17.08.1999. Therefore, the said decision is not applicable in the facts and circumstances of the present case. Keeping in view the factual matrix of the present case, it is considered just and appropriate to assess the notional income of the deceased to be ₹50,000/- per annum instead of ₹15,000/- per annum as assessed by the learned Tribunal. Multiplier of 15 is to be applied in this case. ₹15,000/- each towards funeral expenses and loss of estate besides ₹40,000/- (on account of loss of filial consortium) are awarded to the appellant, in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009** and **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others, 2018(4) R.C.R (Civil), 333**.

Appellant-claimant is, thus, entitled to compensation which is reworked as under:-

Sr. No.	Heads of Claim	Amount
1.	Income	₹50,000/- p.a.
2.	Total dependency after applying a multiplier of 15	(50,000 x 15= 7,50,000/-
3.	Loss of estate	₹15,000
4.	Funeral expenses	₹15,000/-
5.	Filial consortium	₹40,000/-
	Grand Total	**₹8,20,000/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Manner of disbursement as determined by the learned Tribunal shall remain the same.

FAO No. 1601 of 2014.

There is again no dispute regarding the death of Om Prakash in a motor vehicle accident which took place on 23.06.2012 in the manner claimed. Claimants are the widow, minor children and widowed-mother of the deceased. The deceased was claimed to be working as a painter earning a monthly income of ₹15,000/-, though no documentary evidence was produced by the claimants. Learned tribunal accepted income of the deceased as ₹6000/- p.m. No ground is made out for enhancement of the income as assessed by the learned tribunal. Thus, income of the deceased as assessed by the learned tribunal as ₹6000/- per month is upheld. Future prospects at the rate of 40% are afforded in view of the judgement of the Hon'ble Supreme Court in **Pranay Sethi's** case **(supra)**. Learned tribunal has rightly applied multiplier of 16 in view of the age of the deceased i.e. 32

years at the time of accident. Deduction of 1/ 4th has also been correctly effected by the learned tribunal. Claimants are also entitled to ₹15,000/- each on account of funeral expenses and loss of estate.

Instead of ₹15,000/-, appellant No.1-widow is held entitled to a sum of ₹40,000/- on account of loss of consortium. The deceased is also survived by four (04) minor children and a widow mother. In the peculiar facts and circumstances of this case, it is considered just and appropriate to award a consolidated sum of ₹1,00,000/- to appellants No.2 to 6 on account of loss of consortium (parental and filial) in terms of the judgment of the Hon'ble Supreme Court in **Vimla Devi and others v. National Insurance Company Ltd. and another, 2019(1) RCR (Civil) 86** instead of ₹40,000/- each in terms of **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others (supra) .**

Compensation towards the claimants on account of death of Om Prakash is thus re-worked as under:-

1.	Total income of deceased	₹6000/- p.m.
2.	Total income after additional of future prospects at the rate of 40%	₹6000 (₹6000/-+2400) i.e. ₹8400/-
3.	Deduction of 1/4 th on account of personal expenses	₹8400/– (₹8400*1/4=₹2100/-) = ₹6300/-
4.	Annual dependency after applying multiplier of 16	₹6300/- x 12 x 16= ₹12,09,600/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Loss of spousal consortium @40,000 to appellant No.1	₹40,000/-
8.	Loss of parental/filial consortium to appellants No.2 to 6	₹1,00,000/-
	Total Compensation =	**₹13,79,000/-**

Claimants shall be entitled to interest on the enhanced compensation amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say the amount, if any, already disbursed to the claimants shall stand deducted.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

With the abovesaid modification in the amount of compensation, both the appeals are disposed of.

[LISA GILL]
Judge

25.02.2019
s.khan

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