IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 20.11.2019

FAO No.3643 of 2013 (O&M)

National Insurance Co. Ltd. ... Appellant

Versus

Kamla and ors. ... Respondents

FAO No.1475 of 2014 (O&M)

Kamla and ors. ... Appellants

Versus

Wazir Singh and anr. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Man Mohan, Advocate for the insurance company.

Mr. Sandeep Lather, Advocate for the claimants.

None for the driver and owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3643 of 2013 and 1475 of 2014 as these have emerged out of the same award dated 08.03.2013 passed by the Motor Accidents Claims Tribunal, Rohtak whereby compensation has been assessed on account of death of Raghbir Singh in a motor vehicular accident that took place on 02.11.2009.

FAO No.3643 of 2013 has been filed by National Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the

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other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been filed to assail findings of the Tribunal on issue No.1 and quantum of compensation.

Counsel for the insurance company would argue that testimony of Karamvir PW1 son of deceased Raghbir Singh is not sufficient to discharge onus of issue No.1. It is argued that statement made by Karamvir before the Tribunal contradicts his earlier version recorded in the FIR in respect of material particulars, therefore, cannot be relied upon without seeking corroboration.

With regard to quantum of compensation, it is argued that as widow of the deceased has been extended benefit of Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006'), amount received by her is liable to be deducted out of compensation, if found payable. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569**.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1. It is argued that on due investigation of the FIR lodged at the behest of Karamvir, Wazir Singh driver of offending vehicle was put to trial for committing offence

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punishable under Sections 279 and 304-A IPC. It further argued that an adverse inference is liable to be drawn against the respondents before the Tribunal as driver of the offending vehicle did not appear in the witness box without any satisfactory explanation. He has prayed for allowing additional compensation by extending benefit of addition in income for future prospects and adequate compensation under conventional heads.

I have heard counsel for the parties, perused the paper book and records.

The accident in question took place on 02.11.2009 and FIR No.216 dated 03.11.2009 was registered at Police Station Lakhan Majra. Karamvir, author of the FIR was examined to discharge onus of issue No.1. Perusal of cross examination of Karamvir makes it evident that he was not confronted with his previous statement made to the police on the basis whereof FIR Ex.P1 was registered. Indisputably, driver of offending vehicle was challaned for committing offence punishable under Sections 279 and 304-A IPC, on due investigation of aforesaid FIR. Wazir Singh, driver and owner of offending vehicle did not appear in the witness box to counter case of the claimants or testimony of Karamvir. Counsel for the insurance company has failed to point out any materials on record to show that offending vehicle was wrongly indicted in the proceeding as a result of collusion between the claimants and driver-cum-registered owner of the vehicle. The proceedings before the Tribunal are summary in nature and are not amenable to strict principles of law of evidence to be applied. In the

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given circumstances, I do not find any reason to differ with findings of the Tribunal on issue No.1 and accordingly the same are affirmed.

This brings the Court to quantum of compensation assessed by the Tribunal.

The Tribunal awarded Rs.10,34,800/-, detailed hereunder:-

Monthly income of the deceased	Rs.10,171/- (rounded off to Rs.10,200/-)
Multiplier	11
Deduction for personal expenses	1/4th
Loss of dependency	Rs.10,09,800/-
Expenses on funeral	Rs.10,000/-
Loss of estate	Rs.5000/-
Loss of consortium	Rs.10,000/-

The plea of claimants is that deceased was working as Mali-cum-Chowkidar in PWD (Public Health) thereby earning Rs.9766/- per month besides income of Rs.10,000/- per month from agriculture and cattle business. However, the Tribunal has assessed income of the deceased on the basis of documents proved by Har Bhagwan PW3, an official from the department of the deceased, reference whereof has been made in para 19 of the award and the same is affirmed.

The deceased was born on 22.06.1959 and he was more than 50 years of age at the time of unfortunate occurrence. In view of judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**, multiplier of 13 is admissible for the age bracket of 46-50 years and 11 for 51 to 55 years. The Court has not addressed the question that if a person is more than 50 years but less than 51 years, what should be the multiplier. Taking into consideration the

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legislative intent behind the provisions providing for compensation, admissible multiplier in the circumstances would be 13. In this context, reference can be made to judgment of this Court **The Oriental Insurance Co. Ltd. Vs. Kailash Chand and ors., FAO No.3577 of 2017, decided on 13.09.2019.** Claimants shall be entitle to addition in income for future prospects @ 15%. Deduction for personal expenses allowed by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.13,72,410/- [(10,200/- x 12 x 13) + (15% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.14,42,410/- .

Har Bhagwan PW3 in cross examination had stated that family of the deceased would get whole salary till retirement of the deceased on 30.06.2019. Meaning thereby that family of the deceased shall be entitle to salary of Rs.10,171/- per month w.e.f. November, 2009 till 30.06.2019 i.e. 116 months and the amount comes to Rs.11,79,836/-. Only 50% (Rs.5,89,918/-) is amenable to deduction in the light of judgment of this Court **Kamla Devi and others Vs. Sahib Singh and others, FAO No.3064 of 2013, decided on 30.11.2017**. By deducting 50% of the amount out of

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loss of dependency, compensation payable to the claimants comes to Rs.8,52,492/- [(13,72,410 + 70,000) – 5,89,918] and compensation assessed by the Tribunal is reduced to the extent of Rs.1,82,308/- (10,34,800 – 8,52,492). The insurance company shall be entitle to recover the amount paid in excess by filing an application before the Tribunal.

The appeals are disposed of in the aforesaid terms.

20.11.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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

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