IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 26.03.2019

FAO No.1440 of 2015 (O&M)

Smt. Satisho Devi and others ... Appellants

Versus

Rakesh and others ... Respondents

FAO No.2932 of 2015 (O&M)

Ashok Kumar @ Rinku ... Appellant

Versus

Rakesh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Arun Singal, Advocate
for the appellants.

Mr. Ajay Singla, Advocate
for respondent No.3 in FAO No.1440 of 2015.

Mr. Neeraj Khanna, Advocate
for respondent No.3 in FAO No.2932 of 2015.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1440 and 2932 of 2015 as these have emerged out of the same award dated 01.09.2014 passed by the Motor Accidents Claims Tribunal, Panipat whereby compensation has been assessed on account of death of Dharambir @ Chotu and injuries sustained by Ashok Kumar @ Rinku in a motor vehicular accident that took place on 26.09.2011.

FAO No.1440 of 2015 has been filed by Satisho Devi and others seeking enhancement of compensation on account of death of Dharambir whereas the other appeal has been preferred by the injured for the same relief.

FAO No.1440 of 2015

The Tribunal has awarded Rs.7,99,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Multiplier	18
3. Deduction for personal expenses	1/4th
4. Loss of dependency	Rs.7,29,000/-
5. Expenses on funeral	Rs.10,000/-
6. Loss of love and affection	Rs.20,000/-
7. Loss of consortium	Rs.30,000/-
8. Transportation	Rs.10,000/-

The Tribunal has assessed income of the deceased at Rs.4500/- per month. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.4650/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier applied by the Tribunal is correct and affirmed. However, the application for compensation has been filed by the widow, daughter and parents of the deceased. There is nothing on record suggestive of the fact that father of deceased had any disability to render him dependent upon earning of his son. As such, admissible deduction for personal expenses would be 1/3rd. In this manner, loss of dependency is calculated at Rs.9,37,440/- [(4650 x 12 x 18) + (40% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal 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.10,07,440/- and the additional amount is Rs.2,08,440/- (10,07,440 - 7,99,000), payable with interest @7.5% per annum from the date of petition till realization, to Kumari Pooja daughter of the deceased, to be invested in fixed deposit till she attains the age of majority or for a period of three years, whichever is later. Interest accruing on FDR shall be payable to mother of the minor for meeting expenses on her education and living

The appeal is partly allowed in the aforesaid terms.

FAO No.2932 of 2015

The Tribunal has awarded Rs.2,48,400/-, detailed hereunder:-

1. Medical expenses	Rs.1,10,000/-
2. Diet	Rs.10,000/-
3. Pain and sufferings	Rs.20,000/-
4. Transportation	Rs.10,000/-
5. Loss of income	Rs.8400/-
6. Disability	Rs.90,000/-

Counsel for the appellant would argue that the injured has suffered disability to the extent of 45% on account of fracture femur with implant in situ with chronic osteomyelitis with stiffness of right knee joint with poor stability. It is argued that the Tribunal has assessed compensation by considering the victim to be a casual labour on the basis whereof his income has been assessed at Rs.4500/- per month. It is vehemently argued that taking into consideration avocation of the injured and the nature and extent of disability suffered by him at a young age of about 22 years, claimant deserves to be awarded loss of future income by assessing functional disability and applying multiplier method. He has further argued that compensation allowed under various heads is inadequate and needs enhancement. He may be awarded loss of amenities of life.

The Tribunal has awarded a sum of Rs.1,10,000/- towards medical expenses and the same is affirmed. The injured victim remained hospitalised for a period of approximately two months. Taking into consideration the nature of injuries that rendered him disable to the extent of 45%, claimant is awarded Rs.25,000/- for pain and sufferings (additional sum of Rs.5000/-). He shall be entitle to loss of income during the period of treatment and recovery for a period of four months @ Rs.4650/- per month and the same comes to Rs.18,600/- (4650 x 4) (additional amount of Rs.10,200/-)

The Tribunal has awarded a sum of Rs.90,000/- @ Rs.2000/- per percent for disability suffered by the victim. Taking a sympathetic and reasonable view in the light of avocation of the victim, nature and extent of disability suffered by him, loss of future income is required to be assessed by applying multiplier method. The functional disability of the victim is assessed at 30% and a multiplier of 18 is to be applied in view of age of the victim at the time of occurrence. By taking into consideration monthly income of the victim at Rs.4650/- per month in view of discussion made hereinbefore while disposing of FAO No.1440 of 2015, loss of future income qua disability is calculated at Rs.3,01,320/ (4650 x 12 x 18 x 30/100) (additional amount of Rs.2,11,320/-).

Claimant is awarded a sum of Rs.20,000/- for loss of amenities of life. Compensation awarded by the Tribunal towards diet and transportation is affirmed.

Total compensation is Rs.4,94,920/- and the additional amount is Rs.2,46,520/- (4,94,920 - 2,48,400), payable with interest @ 7.5% per annum from the date of petition till realization. The additional amount shall be invested in fixed deposit. Claimant shall be entitle to withdraw the interest accruing on FDR and a sum of Rs.50,000/- on expiry of each year for meeting his future needs and expenses etc.

The appeal is partly allowed in the aforesaid terms.

26.03.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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