IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

234 **Date of decision: 05.07.2019**

FAO No.1552 of 2016 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Sarla Devi and others ... Respondents

FAO No.1553 of 2016 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Riya Devi and others ... Respondents

FAO No.1554 of 2016 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Sheela and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Aseem Aggarwal, Advocate for the insurance company.
None for the claimants.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1552 to 1554 of 2016 as these have emerged out of the same award dated 22.09.2015 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been assessed on account of death of Sanjay @ Leelu, Sandeep @ Lila and Sonu in a motor vehicular accident that took place on 18.09.2013.

Counsel for the insurance company would inform that the appeals have been filed to assail only quantum of compensation assessed by the Tribunal.

FAO No.1552 of 2016

The Tribunal awarded Rs.15,77,800/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5800/-
2. Addition in income for future prospects	50%
3. Multiplier	18
4. Deduction for personal expenses	1/3rd
5. Loss of dependency	Rs.12,52,800/-
6. Expenses on funeral	Rs.25,000/-

7. Loss of estate	Rs.1,00,000/-
8. Loss of love and affection	Rs.2,00,000/-

The plea of claimants is that deceased Sanjay @ Leelu was doing private service and earning Rs.20,000/- per month. They produced certificate dated 13.02.2015 purported to be issued by Parmil Forest Contractor, Village Samaspur, Tehsil Nakur, District Saharanpur (UP) to the effect that Sanjay was doing the work of cutting wood at salary of Rs.15,000/- plus overtime. The claimants did not examine a representative of the aforesaid concern to prove employment and income of the deceased. In the given circumstances, the Tribunal has rightly refused to rely upon the document Ex.P45 for assessing income of the deceased.

The Tribunal has assessed income of the deceased at Rs.5800/- per month by treating him as unskilled labour on the basis of Deputy Commissioner's rates. The Deputy Commissioner's rates are meant for payment to employees out of contingency fund of the State. Taking a clue from notification issued by the State of Haryana fixing minimum wage, income of the deceased is assessed at Rs.5400/- per month. Claimants shall be entitle to addition in income for future prospects @ 40% and deduction for personal expenses would be 50%. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.8,16,480/- [(5400 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

Total compensation is Rs.8,46,480/- and compensation assessed by the Tribunal is reduced to the extent of Rs.7,31,320/- (15,77,800 - 8,46,480). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No.1553 of 2016

The Tribunal awarded Rs.43,65,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.15,000/-
2. Addition in income for future prospects	50%
3. Multiplier	16
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.32,40,000/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of estate	Rs.1,00,000/-
8. Loss of love and affection	Rs.9,00,000/-
9. Loss of consortium	Rs.1,00,000/-

Income of the deceased assessed by the Tribunal is based upon oral and documentary evidence and the same is affirmed. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.30,24,000/- [(15,000 x 12 x 16) + (40% future prospects) – (1/4th 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.30,94,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.12,71,000/- (43,65,000 - 30,94,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No.1554 of 2016

The Tribunal awarded Rs.20,34,400/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5800/-
2. Addition in income for future prospects	50%
3. Multiplier	18
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.14,09,400/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of estate	Rs.1,00,000/-
8. Loss of love and affection	Rs.5,00,000/-

The plea of claimants is that deceased Sonu was doing private service and earning Rs.15,000/- per month. They produced certificate dated 13.02.2015 purported to be issued by Parmil Forest Contractor, Village

Samaspur, Tehsil Nakur, District Saharanpur (UP) to the effect that Sonu was doing the work of cutting wood at salary of Rs.15,000/- plus overtime. The claimants did not examine a representative of the aforesaid concern to prove employment and income of the deceased. In the given circumstances, the Tribunal has rightly refused to rely upon the document Ex.P44 for assessing income of the deceased.

In view of findings recorded in FAO No.1552 of 2016, total compensation is Rs.8,46,480/- and compensation assessed by the Tribunal is reduced to the extent of Rs.11,87,920/- (20,34,400 - 8,46,480). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

05.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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