IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.1692 of 2016 (O&M)
Date of Decision: 21.05.2019

United India Insurance Company Limited

….. Appellant.

Versus

Malti Tiwari and others

...... Respondents.

AND

F.A.O. No.5505 of 2016(O&M)

Malti Tiwari and another

......Appellants.

Versus

Manjit Singh and others

...... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Harsh Aggarwal, Advocate
for the appellant (in FAO No. 1692 of 2016) and
for respondent no.3 (in FAO No. 5505 of 2016).

Ms. Kiran Bala, Advocate
for the appellants (in FAO No.5505 of 2016) and
for respondent nos.1 and 2 (in FAO No. 1692 of 2016).

Service upon respondents no.1 and 2 (in FAO No. 5505 of 2016) dispensed with vide order dated 25.04.2017.

Mr. Pathik Bhasin, Advocate
for respondent no.4 (in FAO No. 1692 of 2016)

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LISA GILL, J.

This judgement shall dispose of FAO No.1692 of 2016 and FAO No. 5505 of 2016 as both these appeals arise from award dated 06.01.2016, passed by the learned Motor Accident Claims Tribunal, Ambala (for short 'tribunal').

FAO No. 1692 of 2016, has been filed by the appellant-Insurance Company challenging the quantum of compensation awarded by the learned tribunal, Ambala.

FAO No. 5505 of 2016, has been filed by the appellants-claimants, seeking enhancement of the compensation awarded by the learned tribunal on account of death of Ram Pyare in a motor vehicle accident. For the sake of convenience, facts are being extracted from FAO No. 1692 of 2016.

As per the averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), Ram Pyare Tiwari, was serving as a guard at Hind Motors, Chandigarh. Ram Pyare Tiwari on 26.08.2014, at about 10.00 a.m., asked his son-Ravi Parkash Tiwari to give some payment from their house. Ravi Parkash Tiwari, his son asked him to reach their house and he also would come home. Ram Pyare Tiwari, proceeded to his house on his bicycle and Ravi Parkash Tiwari was going home on his motorcycle. At about 10.30.a.m., when Ram Pyare Tiwari reached near Vishwakarma Mandir, General Hospital, Ambala Cantt., a truck bearing registration no. HR-37-D-0737, driven by Manjit Singh-respondent no.1 in a rash and negligent manner came from behind and struck against the bicycle of Ram Pyare Tiwari. As a result thereof, front right wheel of the truck ran over the stomach of Ram Pyare Tiwari. With the help of some people passing by, Ram Pyare Tiwari was shifted to General Hospital, Ambala Cantt., by his son. Postmortem was conducted at General Hospital Ambala Cantt. FIR no.318 dated 26.08.2014 , under Sections 279, 304-A IPC, Police Station Ambala Cantt., was registered against respondent no.1-Manjit Singh, in this respect. Compensation was thus claimed. The deceased was stated to be an Ex-Serviceman receiving a pension of ₹9268/- and a salary of ₹11,000/- being an employee of Hind Motors.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Manjit Singh. There is no challenge to this finding of the learned tribunal.

Learned tribunal awarded a total sum of ₹15,84,296/-, rounded off to ₹15,84,300/- on account of death of deceased-Ram Pyare Tiwari, which is detailed as under:-

1.	Income	₹20,268 p.m. (₹9268/- & ₹11,000/-)
2.	Deduction	1/ 3rd
3.	Multiplier	9
4.	Loss of consortium and loss of estate	₹1,00,000/-
5.	Funeral expenses and transportation etc.	₹25,000/-
	Total	**₹15,84,296/-**

Aggrieved therefrom, two appeals have been preferred, one by the appellant- Insurance Company, and another by the appellants-claimants, both challenging quantum of compensation, one seeking reduction and the other for enhancement of the aforesaid compensation.

Learned counsel for the appellant-Insurance Company vehemently argued that the deceased has been accepted to be 57 years old by the learned tribunal. As per statement of PW-2-Bhagat Singh, who was working as record keeper with Hind Motors Limited., Industrial Area Chandigarh, the deceased-Ram Pyare Tiwari was to retire at the age of 58 years. In this situation, dependency should have been calculated while taking the income of the deceased to be ₹20,268/- till the deceased would have attained the age of 58 years. Thereafter, income of the deceased should have been assessed according to the pension received by the deceased i.e. ₹9268/- and that too after deducting the amount of family pension being received by the widow i.e., ₹7400/-. He prays for application of a split multiplier in this case. It is thus prayed that the appeal filed by the Insurance Company be allowed and the amount of compensation be reduced.

Learned counsel for the appellants-claimants on the other hand refutes the above said contentions and submits that learned tribunal has failed to include the income which the deceased was earning by running a dairy farm. He was managing as many as 20 buffaloes and earning a sum of ₹30,000/- per month therefrom, in addition to working as a security personnel with Hind Motors. It is further submitted that there is no evidence on record apart from a bald statement of PW-5-Kunj Bihari Singh that the deceased would have retired at the age of 58 years, but even if the same is accepted to be true, there is no bar to the deceased continuing with his vocation thereafter, elsewhere, with another employer. It is further submitted that the deceased was only 53 years old at the time of accident as per statement of PW-1-Malti Tiwari. Therefore, he is wrongly held to be 57 years old at the time of the accident. Moreover, compensation under the conventional heads is meagre. It is thus prayed that appeal filed by the injured-claimant be allowed and the compensation awarded to the appellant be enhanced.

I have heard learned counsel for the parties and have gone through the file with their assistance.

There is no dispute regarding death of Ram Pyare Tiwari in a motor vehicle accident which took place on 26.08.2014 due to the rash and negligent driving of the offending truck bearing registration no. HR-37-D-0737 by respondent No.1-Manjit Singh.

Insofar as the age of the deceased is concerned, he is mentioned to be 57 years old as per the post-mortem report. Claimants assert that the deceased was 53 years old at the time of the accident. As per the ration card, Ex.P-3, produced by the claimants themselves, the deceased would be 59 years of age at the time of the accident as he is mentioned to be 48 years old on 04.01.2003. Learned counsel for the claimants is unable to deny that except the bald statement of PW-1, there is no evidence whatsoever on record to indicate the exact age of the deceased. Even though, the deceased was admittedly an ex-servicemen, categoric documentary proof of his age has not been placed on record by the claimants. Therefore, learned tribunal has rightly assessed his age to be 57 years at the time of the accident on the basis of the post-mortem report, Ex.P-2.

Insofar as income of the deceased is concerned, it is not disputed by learned counsel for the Insurance Company that Ram Pyare Tiwari was receiving a pension of ₹9268/- being an ex-serviceman and ₹11,000/- from his service at Hind Motors, Chandigarh. It has been held by

Hon'ble Supreme Court in **Puttamma and others v. K.L.Narayana Reddy and another, (2013) 15 SCC 45** that in normal circumstances a split multiplier should not be applied. In the factual matrix of the instant case, I do not find any merit whatsoever in the argument raised by learned counsel for the Insurance Company that the sum of ₹7400/- per month being received as family pension should be deducted from the amount of ₹9268/- while calculating the dependency. It has been held by the Hon'ble Supreme Court in **Helen C. Rebello and others Vs. Maharashtra State Road Transport Corporation and another, 1998 (4) R.C.R (Civil) 177** that the family pension being received cannot be termed as a pecuniary benefit liable for deduction. It is observed that family pension is earned by an employee for the benefit of his service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death and there is no co-relation between the two. Therefore reliance by learned counsel for the appellant on the order dated 30.01.2018 passed in Cross Objections No. 44-CII of 2015 in FAO No. 2852 of 2014 decided along with FAO No. 10228 of 2014, is of no avail to him.

At the same time, there is no merit in the arguments raised by learned counsel for the appellants-claimants that the deceased was earning a sum of ₹30,000/- per month by doing the work of dairy farming. There is no evidence on record except a vague statement of PW-5 to the effect that the deceased had kept 10 buffaloes and was doing the work of dairy farming. Therefore, income of the deceased as assessed by the learned tribunal as ₹20,268/- is maintained.

As the deceased is held to be 57 years old at the time of accident, increase in income at the rate of 10% on account of future prospects has to be afforded keeping in view the observations of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**. Deduction of 1/ 3rd was correctly applied by the learned tribunal. Multiplier of 9 was also correctly applied by the learned tribunal.

₹1,00,000/- has been awarded by the learned tribunal towards loss of consortium and ₹25,000/- has been awarded towards funeral expenses besides ₹10,000/- for loss of estate. However, the claimants are entitled to a sum of ₹15,000/- each for funeral expenses and loss of estate. Appellant no.1 is entitled to a sum of ₹40,000/- towards loss of spousal consortium and appellant no.2 is entitled to a sum of ₹40,000/- for loss of parental consortium in terms of the judgement of the Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) R.C.R (Civil), 333** and decision dated 14.03.2019 of this Court in FAO No. 2110 of 2016, titled as **'Shri Ram General Insurance Company Limited Vs. Beant Kaur and others'**, and other connected matters.

Compensation towards the claimants on account of death of Ram Pyare Tiwari, is thus re-worked as under:-

1.	Total income of deceased	₹20,268/- p.m.
2.	Total income after additional of future prospects at the rate of 10%	₹20268/-(₹20268/-+₹2027/-) i.e. ₹22,295/-
3.	Deduction of 1/ 3rd on account of personal expenses	₹22,295/- (₹22,295*1/3=₹7432/-) = ₹14,863/-

4.	Annual dependency after applying multiplier of 9	₹14,863/- x 12 x 9= ₹16,05,204/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Loss of spousal consortium to the appellant no.1	₹40,000/-
8.	Loss of parental consortium to appellant no.2.	₹40,000/-
	Total Compensation =	**₹17,15,204/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount of compensation 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.

With the abovesaid modification in the amount of compensation, FAO No. 5505 of 2016 is disposed of and FAO No. 1662 of 2016 is dismissed.

[LISA GILL]
Judge

21.05.2019
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.