IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CM No. 8980 CII of 2015 in/and
FAO No. 2981 of 2015 (O&M)
Date of Decision: 11.9.2019

Charanjit Kaur and another

...Appellants

Versus

Pargat Singh and others

...Respondents

(2) FAO No. 8511 of 2014 (O&M)

Oriental Insurance Company Limited

...Appellant

Versus

Charanjit Kaur and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- None for the appellants in FAO No. 2981 of 2015.

Mr. Sahej Mahajan, Advocate, for
Mr. Ashwani Talwar, Advocate,
for the appellant in FAO No. 8511 of 2014 and
for the respondent No.2 in FAO No. 2981 of 2015.

Mr. Mahesh Gupta, Advocate,
for the respondent No.1 in FAO No. 2981 of 2015 and
for respondent 3 in FAO No. 8511 of 2014.

JAISHREE THAKUR, J.

CM No. 8980 CII of 2015 in
FAO No. 2981 of 2015

This is an application that has been filed for condonation of 124 days' delay in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the appeal is condoned.

CM stands disposed of.

Main cases

1. By this common order, this Court proposes to dispose of the above mentioned two appeals, one (FAO No. 2981 of 2015) filed by the claimants/appellants and another (FAO 8511 of 2014) filed by the Insurance Company, as they arise out of the similar set of facts and law.

2. In brief, the facts are that claimants—appellants in FAO 2981 of 2015—filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation, amounting to ₹20 lakhs on account of the death of Lakhvir Singh, aged 21 years old. The deceased Lakhvir Singh was sitting as pillion rider on a scooter which met with an accident with a car bearing temporary No. PB 11L 7056 (T) owned and driven by Pargat Singh —respondent No.1. On account of the accident, Lakhvir Singh fell down and sustained several injuries on his head, right leg and other parts of the body and became unconscious. The driver of the car fled from the spot, leaving the car behind. On account of the injuries, Lakhvir Singh was rushed to Civil Hospital, Dhuri, where he succumbed to his injuries. In respect of the said accident, an FIR No. 08 dated 12.1.2013 was registered at Police Station Sadar, Dhuri, under Sections 279, 304-A, 337, 338 and 427 IPC.

3. The claim petition was contested by respondent No.1—owner and driver of the car in question, who denied the accident, while admitting that the car is owned by him. It was alleged that the car was insured with

respondent No.2—Insurance company at the time of alleged accident.

4. The claim petition was also contested by the Insurance Company denying the liability to pay compensation. Thereafter, issues were framed and evidence led and on the basis of the evidence of AW2 Gurmukh Singh, who was driver of the scooter, the Tribunal held that respondent No.1 was negligent in driving the offending vehicle which had resulted in the accident, causing death of Lakhvir Singh. Thereafter, the Tribunal proceeded to assess the compensation that would be payable and held that the income of the deceased could be assessed at ₹6250/- per month. This figure was arrived at since there was no income proof available on the record. The Tribunal further allowed 30% addition of the income towards future prospects and thereafter deducted one half of the income towards personal expenditure of the deceased. A multiplier of 18 was applied. Apart from that, ₹10,000/- was awarded towards loss of estate and ₹25,000/- were granted on account of funeral expenditure. The total compensation payable to the claimants/appellants was assessed at ₹9,12,500/-. Aggrieved against the said compensation, the instant appeal has been filed by taking the grounds that the compensation has not been assessed in terms of the judgment rendered in **Sarla Verma and others Versus Delhi Transport Corporation and another (2009) 6 SCC 121 and National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009.**

5. On the other hand, as already noticed, the Insurance Company has filed FAO No. 8511 of 2014 on the ground that the Tribunal has wrongly applied multiplier of 18 for the deceased, who was 21 years old, whereas, the multiplier of 9 should have been applied, considering the average age of his parents, who were 59 and 62 years old respectively. In support of his contentions, the counsel places reliance on the judgment rendered in **Shakti Devi Versus New India Assurance Company 2011 AIR (SC) 164.** It was also argued that interest on the amount of compensation allowed is on the higher side.

6. I have heard learned counsel for the parties and have also perused the impugned award.

7. The Tribunal, on scrutiny of the evidence produced by the respective parties, allowed the claim petition and assessed the compensation payable at ₹9,12,500/-. The primary factor for allowing the claim petition was that no evidence worth its name had been adduced by respondent No.1—owner and driver of the offending vehicle, to rebut the evidence of AW2 Gurmukh Singh, who was an eye witness as well as the driver of the scooter, on which Lakhvir Singh was the pillion rider. It is also factor to be considered that after the accident, the driver of the offending vehicle ran away from the spot and the offending vehicle was subsequently taken into possession. The only question that needs to be considered is, whether the compensation as assessed by the Tribunal is in consonance with the judgments rendered in **Sarla Verma** and **Pranay Sethi (supra).**

8. Admittedly, there was no income proof on the record and, therefore, the Tribunal has rightly held that the deceased would have been earning ₹6250/- per month, as a labourer, by considering the minimum wages applicable at the relevant time. Further, the Tribunal has rightly applied the multiplier of 18, considering the age of the deceased to be 21

and not on the basis of the age of his parents as argued by the learned counsel for the Insurance Company. It is worthwhile to note that in the subsequent judgments as rendered by the Hon'ble Supreme Court in **Sarla Verma** and **Pranay Sethi (supra)**, it is the age of the deceased and not the dependent of the deceased that has to be taken for the purpose of applying multiplier, while holding that there may be a number of dependents of the deceased whose age may be different and, therefore, age of the dependents has no nexus with the computation of compensation. Further, though the Tribunal rightly deducted one half of the income of the deceased towards his personal living expenses, but the Tribunal has gone wrong in awarding 30% on account of future prospects of earning of the deceased. The Tribunal ought to have awarded 40% on account of future prospects, in view of the judgment of the Hon'ble Supreme Court in **Pranay Sethi (supra).** Therefore, increase in income on account of future prospects at the rate of 40% and other conventional heads are required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited (Supra)** and the same is re-worked and tabulated as under:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Lakhvir Singh
(ii)	Date of accident	11.1.2013
(iii)	Age of the deceased	21 years
(iv)	Monthly income of the deceased	₹ 6250/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 6250+₹2500)= ₹ 8750/- per month
(vi)	1/2 of (v) above deducted towards personal expenses	(₹ 8750-₹4375) = ₹ 4375/- per month
(vii)	Compensation calculated after applying the multiplier of 18	(₹4375X12X18) = ₹ 9,45,000/-

(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of estate	₹ 15000
	Total	₹9,75,000

9. As a sequel of my discussion above, the FAO No. 2981 of 2015 is partly allowed. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 9,75,000/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the petition till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal.

10. However, FAO No. 8511 of 2014 of 2014 is dismissed.

(JAISHREE THAKUR)
JUDGE

11.9.2019
prem

Whether speaking/reasoned Yes
Whether reportable No