IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 4754 of 2014 (O&M)
Date of Decision : 26.03.2019

National Insurance Company Ltd. .....Appellant

Versus

Kirna Devi and others .....Respondents

2. FAO No. 5065 of 2014 (O&M)

Dilbag Singh and others ....Appellants

Versus

Suman Lata and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Suvir Dewan, Advocate
for the appellant in FAO-4754-2014 and
for respondent no. 3 in FAO-5065-2014.

Mr. Bahadur Singh, Advocate
for appellants in FAO-5065-2014 and
for respondents no. 1 to 3 in FAO-4754-2014.

Surinder Gupta, J.

Motor Accident Claims Tribunal, Panchkula (later referred to as 'the Tribunal') vide award dated 06.03.2014, awarded compensation of ₹05,05,000/- for death of Vijay Kumar @ Joney (later referred to as 'the deceased'), husband of appellants no. 1 and 2 and brother of appellant no. 3 (in FAO-5065-2014), in a motor vehicle accident on account of use of motorcycle bearing registration no. HR-03N-2808 (later referred to as 'the offending vehicle'). National Insurance Company Ltd., insurer of the offending vehicle and claimants have filed two separate appeals bearing FAO No. 4754 of 2014 and FAO No. 5065 of 2014, respectively, against the award.

2. As the only issue raised by appellants in both the appeals relates

to quantum of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. The compensation awarded by the Tribunal was computed as follows:-

(i)	Name of the deceased	Vijay Kumar @ Joney
(ii)	Age of the deceased	19 years
(iii)	Date of accident	05.03.2012
(iv)	Marital status	Unmarried
(v)	Income of the deceased	₹40000 per annum
(vi)	50% of (v) above added in income of the deceased towards loss of future prospects	(₹40000+₹20000) = ₹60000 per annum
(vii)	1/3rd of (vi) above deducted towards personal expenses	(₹60000- ₹20000) = ₹40000 per annum
(viii)	Compensation calculated after applying the multiplier of 12 as per parents of the deceased	(₹40000X12) = ₹480000
(ix)	Compensation towards last rites and funeral expenses.	₹25000
Total		**₹505000**

4. Learned counsel for Insurance Company, insurer of the offending vehicle, has argued that claimants have filed petition under Section 163-A of the Motor Vehicles Act (later referred to as 'the Act') and as per structured formula, multiplier as per age of the deceased applicable in this case is 16. Tribunal after making 50% addition in income of the deceased has assessed the same as ₹60000/- per annum while as per law settled by Apex Court in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another,*** ***(2009) 6 SCC 121***, addition in income of the deceased towards loss of future prospects can be allowed in the petition filed under Section 166 of the Act and not under Section 163-A of the Act. He has further argued that as per Schedule II under Section 163-A of the Act, claimants are entitled to compensation of ₹4500/- towards funeral expenses and loss of consortium while the Tribunal has allowed compensation of

₹25000/- on this score.

5. Learned counsel for respondents no. 1 to 3 (claimants-appellants in FAO-5065-2014) has argued that issue of application of multiplier has been set at rest by Apex Court in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another,*** ***(2009) 6 SCC 121***, which was further affirmed in case of ***Pranay Sethi (supra)***, as such, keeping in view age of the deceased, multiplier applicable in this case is 18. He has, however, not disputed the submission of learned counsel for Insurance Company that addition in income of the deceased towards loss of future prospects could not be allowed.

6. Learned counsel for Insurance Company has further argued that driver of the offending vehicle was having a learner's driving licence and was not carrying a person having a valid driving licence with him at the time of accident, as such, there is violation of terms and conditions of the insurance policy and the appellant (Insurance Company) may be allowed right to recover the amount of compensation paid to claimants from owner of the offending vehicle.

7. Admittedly, driving licence of the deceased was valid. Learned counsel for Insurance Company could not show any terms and conditions of the insurance policy, which provide that a person if driving a vehicle on a 'learner driving licence' and causes accident, liability of insurer is not attracted. This argument was also raised before the Tribunal and was rightly discarded.

8. Income of the deceased is assessed as ₹40,000/- per annum. He was unmarried, as such, ½ income of the deceased was to be deducted towards his personal expenses. Applying the multiplier of 18, amount of compensation works out to be (₹40000-₹20000=₹20000X18) ₹3,60,000/-.

Claimants are allowed compensation of ₹4500/- towards funeral expenses and loss of estate. Consequently, claimants are entitled to total compensation of (₹360000+₹4500) ₹3,64,500/-.

9. As a sequel of my discussion above, the appeal **(FAO No. 4754 of 2014)** filed by **National Insurance Company Ltd.**, insurer of the offending vehicle is allowed, while the appeal **(FAO No. 5065 of 2014)** filed by claimants is dismissed. Award of the Tribunal is modified and the compensation allowed to claimants for death of **Vijay Kumar @ Joney** is reduced from **₹5,05,000/-** to **₹3,64,500/-**.

10. Insurance Company shall have right to recover the excess amount of compensation from claimants, if already paid.

March 26, 2019 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*