

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 09.01.2019

1. FAO No.2331 of 2016(O&M)

Jhumka Devi and others

.....Appellants

Versus

Deepak and others

.....Respondents

2. FAO No.2863 of 2016(O&M)

Reliance General Insurance Co. Ltd.

.....Appellant

Versus

Jhumka Devi and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Amandeep Kaur, Advocate
for the appellants in FAO No.2331 of 2016 and
for the respondents in FAO No.2863 of 2016.

Mr. Subhash Goyal, Advocate
for the appellant in FAO No.2863 of 2016 and
for respondent No.3 in FAO No.2331 of 2016.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, FAO No.2331 of 2016 titled
Jhumka Devi and others Vs. Deepak and others and FAO
No.2863 of 2016 titled Reliance General Insurance Co. Ltd. Vs.

Jhumka Devi and others are being decided. Since both the appeals have arisen from the same accident, therefore, common facts are being noticed.

[2]. Both the appeals have been preferred against the award dated 12.02.2016 passed by Motor Accident Claims Tribunal, Chandigarh (for short 'The Tribunal').

[3]. The accident took place on 01.11.2014 when deceased Chinta Mani was crossing the road leading from Khuda Lahora to Sector-17, Chandigarh. Offending vehicle bearing registration No.PB65-X-7531 being driven by Deepak came in a rash and negligent manner without obeying the traffic rules and struck against the deceased. The deceased fell down on the bonnet of Toyota Innova and then fell on the road. He sustained multiple injuries. Criminal case was registered on the statement of one Jeetu Singh.

[4]. The Tribunal held under issue No.1 that the accident in question had taken place due to rash and negligent driving of driver of the offending vehicle. While deciding issue No.2, the Tribunal disbelieved the statement of PW 1 Jhumka Devi to the extent of establishing monthly income of the deceased to be Rs.12,000/-. The Tribunal considered the deceased to be a daily wager and as per minimum wages payable during the period of 01.10.2014 to 31.03.2015 as per letter dated 22.05.2015 issued

by Assistant Labour Commissioner, Chandigarh, assessed the income of the deceased to be Rs.7940/- per month in the category of unskilled labourer. The deceased was 42 years of age and after applying multiplier of 14 and adding future prospects to the tune of 30%, the Tribunal assessed the compensation to the tune of Rs.13,00,572/- to which an amount of Rs.1,00,000/- was added as consortium, Rs.25,000/- as funeral expenses and Rs.1,00,000/- as loss of estate. In addition to the aforesaid, minor claimants No.4 to 6 were held entitled to Rs.1,00,000/- each on account of loss of love and affection. In this manner, total compensation to the tune of Rs.18,25,572/- was assessed. Apportionment of the said compensation was made in the ratio as suggested in para No.10 of the award.

[5]. Aggrieved by the award of the Tribunal, the claimants have preferred FAO No.2331 of 2016 and Insurance Company has filed FAO No.2863 of 2016.

[6]. Learned counsel for the claimants/appellants in FAO No.2331 of 2016 submitted that keeping in view the composition of the family of the deceased, assessment towards monthly income of the deceased was totally on the lower side. The family of the deceased is comprised of widow, dependent son, daughter and three minor sons. Out of the aforesaid, major son

namely Sandeep is 100% disabled and is totally dependent upon the income of the deceased. The assessment of monthly income of the deceased to the tune of Rs.7940/- is totally on the lower side as the aforesaid amount is not sufficient to meet the daily expenses of the family members. Daughter and minor sons are school going and in view of requirement of the family, the deceased was capable enough to meet the requirement of the family in terms of financial resources and in view of above, the statement of PW 1 Jhumka Devi ought to have been accepted by the Tribunal in toto and income of the deceased ought to have been assessed as Rs.12,000/- per month.

[7]. On the other hand, learned counsel for the Insurance Company/appellant in FAO No.2863 of 2016 submitted that in view of age of the deceased, future prospects to the tune of 30% is on the higher side, rather it should have been applied to the tune of 25% in view of ratio laid down in **National Insurance Company Limited Vs. Pranay Sethi and others, 2017 SCC 1270.**

[8]. I have heard learned counsel for the parties and have perused the material on record.

[9]. The family of the deceased was comprising of widow aged 40 years, son Sandeep aged 21 years (who is pleaded to be 100% disabled and is totally dependent upon the income of

the deceased), unmarried daughter who was 18 years of age at the time of filing of the claim petition and claimants No.4 to 6 (minor sons) who are school going and are also dependents upon the income of the deceased. The requirement of the family in terms of finances could not be answered by a paltry amount of Rs7940/- per month. In a welfare legislation, assessment of income has to be made on the basis of some guess work. In determination of just compensation, hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be viewed with some objective standards. The award should correspond to reasonableness and endeavour should be to award just compensation, keeping in view the suffering of the claimants. In determination of just compensation, though the same cannot be equated to a bonanza, but it has to be based on application of fair and equitable principles. Reasonable approach should be adopted. A distinction has to be drawn between the damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused to the aggrieved party and to restore the normal circumstances as if that injury had not taken place. The Court should be liberal in determination of quantum of compensation to be paid to the victim.

[10]. Seeing the number of family members who are dependents upon the income of the deceased, I deem it appropriate to consider the income of the deceased to be Rs.9,000/- per month from all sources. As per ratio laid down in **National Insurance Company Limited Vs. Pranay Sethi and others case (supra)**, future prospects to the tune of 25% has to be applied in view of deceased being 42 years of age. Therefore, the monthly income of the deceased would come out to be Rs.11,250/- ($9,000 + 2250 = 11,250$) i.e. Rs.1,35,000/- per annum. There are total six dependents upon the income of the deceased, therefore, the deceased was not supposed to spend more than $1/4^{\text{th}}$ of his income towards his own expenses. $1/4^{\text{th}}$ of the amount from the annual income has to be deducted towards self expenses of the deceased i.e. Rs.33,750/- and after deducting the same, annual income of the deceased would come out to be Rs.1,01,250/- ($1,35,000 - 33,750 = 1,01,250$). Keeping in view the age of the deceased and in view of ratio laid down in **Smt. Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) PLR 22,** multiplier of 14 has to be applied and after applying the same, the amount of compensation would come out to be Rs.14,17,500/-.

[11]. The ratio laid down in **National Insurance Company Limited Vs. Pranay Sethi and others case (supra)** was

considered by the Hon'ble Apex Court in **Civil Appeal No.9581 of 2018** arising out of **SLP (Civil) No.3192 of 2018** titled **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others** decided on 18.09.2018. In the aforesaid case, the Hon'ble Apex Court held that loss of consortium and loss of estate are other conventional heads under which compensation is to be awarded in the event of death. The Motor Vehicles Act is a beneficial and welfare legislation and the Court is duty bound to award just compensation irrespective of the fact whether any such plea was raised by the claimant or not. The consortium was held to be compendious term which encompasses spousal consortium, parental consortium and filial consortium. The right of consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased. Spousal consortium is generally considered as a right to the surviving spouse for loss of company, society and other conjugal relations viz-a-viz the deceased. Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents for compensation in a case

of accidental death of a child. The Hon'ble Apex Court after due consideration of ratio of **National Insurance Company Limited Vs. Pranay Sethi and others case (supra)** appreciated components of loss of love and affection by awarding Rs.50,000/- each to the claimants and loss of consortium to all the claimants to the extent of Rs.40,000/- each.

[12]. In the instant case, spousal consortium and parental consortium are applicable. In **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram's case (supra)**, an amount of Rs.40,000/- each was awarded as filial consortium. Besides the aforesaid amount, an amount of Rs.50,000/- each towards loss of love and affection, an amount of Rs.15,000/- towards loss of estate and an amount of Rs.15,000/- towards funeral expenses was awarded. If the calculations are made on the basis of ratio laid down in **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram's case (supra)**, an amount of Rs.3,00,000/- has to be awarded towards loss of love and affection @ Rs.50,000/- each in favour of six claimants. An amount of Rs.40,000/- as spousal consortium in favour of widow Jhumka Devi and an amount of Rs.40,000/- each to claimants No.2 to 6 for parental consortium have to be awarded. In this manner, an amount of Rs.2,40,000/- can be assessed towards loss of spousal and parental consortium. An amount of

Rs.15,000/- towards loss of estate and an amount of Rs.15,000/- towards funeral expenses have to be added in the aforesaid tally. In this way, total amount of compensation would come out to be Rs.19,87,500/- (14,17,500 + 3,00,000 + 2,40,000 + 15,000 + 15,000 = 19,87,500). The Tribunal has already awarded an amount of Rs.18,25,572/-, therefore the said amount has to be deducted from the total compensation and after deducting the same, enhanced amount of compensation would come out to be Rs.1,61,928/- (19,87,500-18,25,572=1,61,928).

[13]. The enhanced amount of compensation i.e. Rs.1,61,928/- shall carry interest @ 7.5 % per annum from the date of filing of the claim petition till final realisation of the amount. The liability of the Insurance Company shall be intact and the apportionment as devised by the Tribunal in para No.10 of the award shall remain intact.

[14]. With the aforesaid modification, both the appeals are disposed of.

09.01.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No