IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-260-2016(O&M)

Smt.Rajni Bala and others

...Appellants

Versus

Ramu Ram and others

...Respondents

(2) FAO-1352-2015(O&M)

United India Insurance Co. Ltd.

...Appellant

Versus

Rajni Bala and others

...Respondents

Date of Decision:-11.7.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Arun Sharma, Advocate
for the appellants in FAO-260-2016 and
for respondents No.1 to 6 in FAO-1352 of 2015.

Mr.Harsh Aggarwal, Advocate
for the appellant in FAO-1352 of 2015 and
for respondent No.2 in FAO-260-2016.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-260-2016(O&M) filed on behalf of appellants Smt.Rajni Bala and others and FAO-1352-2015(O&M) filed on behalf of appellant – United India Insurance Co. Ltd., which have arisen out of the same accident.

Briefly stated facts of the case are that as a result Rashpal son of Sh.Resham Singh meeting his end in a road side accident, which took place on 14.11.2013 at about 1:30 p.m. in the area of just ahead of Saha Chowk on turn of culvert, statedly due to rash and negligent driving of truck bearing registration No.RJ-19-IG-8032 (hereinafter referred to as the offending vehicle) by Ramu Ram – respondent No.1, legal representatives of Rashpal deceased i.e. wife – Smt.Rajni Bala, aged about 35 years, minor daughter – Simranjit Kaur aged about 13 years, minor son – Anmol Raj Singh, aged about 12 years, mother – Smt.Manjit Kaur, aged about 60 years, father – Sh.Resham Singh, aged about 61 years and unmarried sister – Ms.Gurmeet Kaur, aged about 28 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Ramu Ram - driver and owner as well as United India Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.25 lacs along with interest.

Notice of the claim petition was given to both the respondents, who put in appearance and offered a contest. However, vide Award dated 5.12.2014, the Tribunal allowed the claim petition and granted compensation of Rs.13,48,000/- along with interest @ 7.5% per annum from the date of filing of the petition till actual realization to the claimants payable by both the respondents jointly and severally. The manner in which the compensation is to be apportioned is also given in the award.

The appellants/petitioners/claimants Smt.Rajni Bala, Baby Simranjit Kaur and Master Anmol Raj Singh being of the view that the compensation awarded was on lower side, have approached this Court by way of filing an appeal seeking enhancement of compensation.

On the other hand, respondent No.2 – insurance company feeling that the amount of compensation awarded is on the higher side has also filed an appeal.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal keeping in view the facts of the case and on analysis of the evidence produced before it, came to the conclusion that respondent No.1 – Ramu Ram was author of the accident by his rash and negligent driving of the offending truck resulting in death of Rash Pal, in that way both the respondents were held jointly and severally liable to pay compensation. While assessing the compensation, the Tribunal has taken age of deceased to be 41 years on the date of accident i.e. 14.11.2013 considering his date of birth entered in his driving licence to be 13.7.1973. As regards the avocation and income of the deceased, the Tribunal has considered the testimony of PW4 Dr.Sameer Gupta from Saket Hospital, Ambala Cantt., who had brought the salary register of the employees of his hospital stating that Rash Pal deceased was his employee working as a Hospital Attendant and Public Relation Officer for last about 7 years and he was being paid monthly salary of Rs.8,500/- and in addition to that Rs.2,000/- per month as travelling allowance. He stated that salary for the month of November, 2013 was paid to his wife Smt.Rajni Bala for full month along with travelling allowance. He had placed on record relevant copies of the salary register as Ex.P2 to Ex.P5. The Tribunal in that way, took monthly income of the deceased to be Rs.10,500/-.

Learned counsel for the Insurance company has contended that an amount of Rs.8,500/- per month be taken as monthly income of the deceased and Rs.2,000/- per month paid to him as travelling expenses be not taken into consideration since that amount was personal to the deceased. However, learned counsel for the claimants has vehemently opposed the contention stating that Rs.2,000/- was paid to the deceased per month, which was part of his salary and it was not conditional to his taking up any travelling. Therefore, the same cannot be ignored while considering the income of the deceased.

After hearing the learned counsel and going through the record, I find that nothing is there on the record that the deceased was required to do regular travelling and was paid that amount for the said reason. Even if it is taken that he was working as Public Relation Officer also required to meet public as well as doctors at Ambala to highlight the speciality of the hospital as stated by PW4 Dr.Sameer Gupta in his crossexamination but at the same time, it is to be seen that such witness had stated in his examination-in-chief itself that the deceased was working as Hospital Attendant as well, therefore, the nature of his job did not essentially require regular travelling and under the circumstances Rs.2,000/- paid to him cannot be ignored while considering monthly income of the deceased.

Learned counsel for the insurance company has referred to a judgment by Co-ordinate Bench of this Court passed in FAO-5894 of 2014 in case titled ***'Sheela Devi and another Versus Sukhminder Singh and others'***. But the same does not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

The Tribunal omitted to make addition on account of future prospects. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased was above age of 40 years, 25% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.10,500 + 2,625 = Rs.13,125/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the number of dependent family members are 4 to 6, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.9,844/- per month, annual dependency comes out to Rs.9,844 x 12 = Rs.1,18,128/-.

The Tribunal has used multiplier of 14, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.1,18,128 x 14 = 16,53,792/-.

The Tribunal has granted Rs.25,000/- as funeral expenses, Rs.50,000/- each to petitioners No.1 to 4 on account of loss of love and affection, Rs.50,000/- to petitioner No.1 for loss of consortium. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs.16,53,792 + 70,000 = 17,23,792/-.

The Tribunal has awarded compensation of Rs.13,48,000/-.

In this way, the enhanced amount comes out to Rs.3,75,792/- (17,23,792 - 13,48,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.3,75,792 /-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the FAO-260-2016 filed on behalf of the claimants is allowed partly with costs.

Consequently, FAO-1352-2015 filed on behalf of the insurance company stands dismissed.

11.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No