IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3901 of 2015 (O&M)
Date of Order:27.03.2019

Smt. Narinder Chaudhary and another ..Appellants

Versus

Pawan Kumar and others ..Respondents

FAO No.4496 of 2015 (O&M)

Bimla Devi and others ..Appellants

Versus

Pawan Kumar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagdish Manchanda, Advocate
for the appellants (in FAO No.3901 of 2015)

Mr. Sagar Aggarwal, Advocate
for the appellants (in FAO NO.4496 of 2015)

Mr. Sukhdarshan Singh, Advocate,
for respondent no.3-Insurance Co.

ANIL KSHETARPAL, J(Oral)

By this order, two appeals filed by the claimants seeking enhancement of the compensation shall stand disposed of as both are arising from the same accident decided by a common judgment by the learned Motor Accident Claims Tribunal (Fast Track Court), Patiala, (hereinafter referred to as 'the Tribunal').

FAO No.3901 of 2015 is arising from death of late Sh. Jasmer Singh, aged about 47-48 years, in a motor vehicular accident, which took place on 15.01.2003. He was a government servant, employed as a teacher, drawing salary of Rs.17,646/- per month. Learned Tribunal has applied a cut of 1/3rd on account of own expenses, although, there were 5 dependents including widow, son, daughter, aged mother and father.

Learned counsel appearing for the appellants has submitted that the cut on account of own expenses should have been 1/5th as there were total 6 members of family. He has further submitted that the learned Tribunal has erred in not awarding interest from the date of the claim petition till payment as the learned Tribunal only ordered that in case the payment is not deposited within one month from the date of decision than the interest would accrue.

On the other hand learned counsel for the respondent-Insurance Company has pointed out that the claimants have already been awarded Rs.2,25,000/- under conventional heads i.e. funeral expenses, loss of consortium, loss of estate. He submits that as per the judgment passed by the Constitution Bench of the Hon'ble Supreme Court in the case of ***National* Insurance Company Limited vs. *Pranay Sethi and others, JT 2017(10) SC 450***, maximum of Rs.70,000/- could be awarded under the conventional heads.

As regards income and increase in income on account of future prospects, there is no dispute between the parties.

Keeping in view the fact that there were total 6 members of the family and deceased left behind 5 dependents, therefore, in the considered opinion of this Court, appropriate cut should be 1/4th because son of the deceased on the date of the claim petition was 21 years of age. However, In a subsequent judgment, the Hon'ble Supreme Court while deciding Civil Appeal No.9581 of 2018 (***Magma General Insurance Co. Ltd. V Nanu Ram alias Chuhru Ram and others)*** has held that parents are also entitled to filial consortium @ Rs.40,000/- each.

Keeping in view the aforesaid facts, the compensation payable is re-worked as under:-

Income	Rs.17,646-00	
Annual Income	Rs.2,11,752-00	
<u>Income Tax</u>		
0 to 50,000 exempted	NIL	
50,001 to 60,000 @ 10%	Rs.1000-00	
60,001 to 1,50,000 @ 20%	Rs.18,000-00	
above 1,50,000 @ 30%		
i.e. Rs.61,752 @30%	(-) Rs.18525-00	= 37525-00
5% surcharge		1875-00
Total Tax		= 39400-00
Income after tax	=2,11,752-39,400=1,72,352-00	
Heads	Compensation awarded by MACT	Compensation awarded by High Court
Monthly Income assessed	17646/-	1,72,352/- (14,363/- p.m.)
Add Future Prospects 30% -Deduction 1/3rd	23,528/-(After addition) (-) 7,844/- = 15684/-	+ 4,308/- (30%) 18,671/- 4,667/-(1/4th) = 14,004/-
Annual dependency	15684x12=1,88,208	14004x12=1,68,048
Multiplier	1,88,208x13=24,46,706/-	1,68,048x13=21,84,624/-
Conventional Heads		
-Loss of estate	NIL	15000-00
-consortium	1,00,000-00	40,000-00
-Funeral Expenses	25,000-00	15,000-00
-Filial Consortium	NIl	80,000-00 (40,000/- each)
-Loss of love & affection	1,00,000-00	NIL
Damage of vehicle	1,72,477-00	1,72,477-00
Total Compensation	28,44,181-00	25,07,101
Already awarded by Motor Accident Claims Tribunal	28,44,181-00	25,07,101-00

Compensation Awarded by the **MACT** : Rs. 28,44,181-00

(-)Compensation Awarded by the High Court : Rs. 25,07,101-00

Decreased Compensation : Rs. 3,37,080-00

As regards FAO No.4496 of 2015, this pertains to the case filed by the dependents of late Sh. Bhagat Ram, who was aged about 44 years and agriculturists by profession. He had left behind widow, two sons and mother. Learned Tribunal has taken the income at Rs.7500/- per month as unskilled labourer. It has come in evidence that he was owner of 10 acres of land and also owner of two harvester combines in partnership apart from sole owner of a tractor. Hence, it is submitted by learned counsel for the appellants that he was a progressive farmer and therefore, the income assessed is on the lower side. He further submitted that learned Tribunal has applied a cut of 1/3rd on account of self expenses, it should be 1/4th. He further submitted that no amount has been awarded on account of future prospects.

On the other hand, learned counsel for the respondent-Insurance Company has submitted that the agricultural land has been inherited by the claimants and, therefore, the income assessed by the learned Tribunal is correct. He has further submitted that on account of conventional heads i.e. funeral expenses, loss of estate, loss of consortium, the learned Tribunal has awarded Rs.2,25,000/- which can at the most be Rs.70,000/- as per the judgment passed by a Constitution Bench of the Hon'ble Supreme Court in the case of ***National* Insurance Company Limited vs. *Pranay Sethi and others, JT 2017(10) SC 450***.

Keeping in view the aforesaid arguments of learned counsels, this court is of the opinion that an agriculturist who is owner of 10 acres of land in the State of Haryana, also owner of two harvester combines in partnership and sole owner of a tractor, was a progressive farmer/agriculturists, therefore, the income assessed by the learned Tribunal treating him to be an unskilled labourer is not justified.

In view of the aforesaid, the income is assessed at Rs.9,000/-.

There shall be cut of 1/4th for own expenses keeping in view the fact that he left behind 4 dependents. On account of future prospects, no amount has been awarded and therefore, 25% is to be added. On account of conventional heads, the amount of Rs.70,000/- i.e., funeral expenses, loss of estate, loss of consortium is to be awarded. However, since the mother is also claimant, she would also be entitled to filial consortium of Rs.40,000/- as per the judgment passed in ***<u>Magma General Insurance Co. Ltd.(supra).</u>*** Hence, the compensation payable is re-worked as under:-

Income	Rs.9,000-00	
Annual Income	Rs.9000x12-1,08,000/-	
<u>Income Tax</u>		
0 to 50,000 exempted	NIL	
50,001 to 60,000 @ 10%	Rs.1000-00	
60,001 to 1,08,000 @ 20%	Rs. 9600-00	
Total Tax	Rs.10600-00	
Income after deduction of income tax	Rs.97,400-00	
Heads	Compensation awarded by MACT	Compensation awarded by High Court
Monthly Income assessed	7500/-	97,400-00/- p.a. (8117/- p.m.)
Add Future Prospects -Deduction 1/3rd	NIL 2500-00 (1/3rd) =5000/-	2030/-(25%) =10147/- (1/4th) = 2537/- =7610
Annual dependency	5000x12=60,000/-	7610x12=91,320/-=
Multiplier	60,000x14=8,40,000/-	91320x14=12,78,480/-
Conventional Heads		
-Loss of estate	NIL	15000-00
-consortium	1,00,000/-	40,000-00
-Funeral Expenses	25,000/-	15,000-00
-Filial Consortium	NIL	40,000-00
-Loss of love & affection	1,00,000/-	
Total Compensation	10,65,000/-	13,88,480/-

Compensation Awarded by the High Court : Rs. 13,88,480-00
(-)Compensation Awarded by the MACT : Rs. 10,65,000-00

Enhanced Compensation : Rs. 3,23,480-00

The compensation assessed by this court as also by the learned Tribunal shall carry interest @ 6% per annum from the date of claim petition till realization.

Both the appeals are disposed of accordingly.

March 27, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No