IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1)

FAO No.6363 of 2013 (O&M)
Date of Decision: March 25, 2019.

Sunita Devi and others

..........APPELLANT(s).

VERSUS

Hawa Singh and others

........RESPONDENT(s).

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(2)

FAO No.171 of 2014 (O&M)

Reliance General Insurance Company Limited

..........APPELLANT(s).

VERSUS

Sunita Devi and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.K.Yadav, Advocate
for the appellants in FAO-6363-2013 and
for respondents No.1 to 5 in FAO-171-2014.

Mr. T.K. Joshi, Advocate
for respondent No.3 in FAO-6363-2013
and for appellant in FAO-171-2014.

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SURINDER GUPTA, J.

Motor Accident Claims Tribunal, Narnaul (later referred to as the tribunal) vide award dated 26.08.2013, awarded compensation of ₹19,53,000/- for the death of Ashok Kumar (later referred to as the deceased) in a motor vehicle accident with vehicle bearing registration No.HR-61H-2424, (later referred to as the offending vehicle).

The claimants have filed appeal bearing FAO No.6363 of 2013 claiming enhancement of compensation, while insurer of the offending vehicle Reliance General Insurance Company Limited has filed appeal bearing FAO No.171 of 2014 challenging the amount of compensation awarded to the claimants.

As the only issue pressed in these appeals relates to quantum of compensation, detailed facts of the case are being skipped for the sake of brevity.

The compensation awarded by the tribunal was computed as follows:-

(i)	Name of the deceased	Ashok Kumar
(ii)	Date of accident	28.01.2011
(iii)	Age of the deceased	33 years
(iv)	Income of the deceased	₹8000 p.m.
(v)	Addition of 50% towards loss of future prospects	₹8000+4000=₹12000 p.m.
(vi)	Deduction of 1/4th towards his personal expenses	₹12000-3000=₹9000 p.m. i.e. ₹108000 p.a.
(vii)	Multiplier applied 16	₹108000X16 = ₹1728000/-
(viii)	Loss of consortium	₹100000
(ix)	Loss of care and guidance for children	₹100000
(x)	Funeral expenses	₹25000
	Total	₹19,53,000/-

Learned counsel for insurance company (appellant in FAO No.171 of 2014) has argued that as per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009***, claimants are entitled to 40%

addition in the income of the deceased towards loss of future prospects, while the tribunal has allowed 50% addition. Under the conventional heads, claimants are entitled to compensation of ₹70,000/- in place of ₹2,25,000/- awarded by the tribunal.

Learned counsel for the claimants (appellants in FAO No.6363 of 2013) while conceding the law as settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra),*** has argued that income of the deceased as assessed by the tribunal is on lower side. The claimants have proved that deceased was running a mobile shop. Statement of his bank accounts shows that he had been depositing around ₹20,000/- to ₹25,000/- per month in his account. Though the payments were made from that account under the various heads but it is proved that he had income from the business as claimed by the claimants.

Learned counsel for insurance company has argued that copy of the statement of account of deceased Ex.P4 placed on file by the claimants shows that amount of around ₹20,000/- to ₹25,000/- or so were being deposited in the account of deceased but the same were being withdrawn on the same day or on the next day. This shows that entries in the statement of account were manipulated. The accident took place in the year 2011 and the tribunal has rightly assessed income of the deceased as ₹8,000/- per month.

Firstly, I take oral evidence produced by the claimants regarding income of the deceased. Sunita Devi wife of the deceased while appearing as PW3 has stated that deceased was an entrepreneur, running his business under the name and style of Chirag Mobile Centre and Chirag Communication, ITI Road, Mohindergarh and was earning ₹13,000/- per month. However, she could not produce any documentary evidence regarding income of the deceased. Naresh Kumar, Steno to SDO (Civil), Mohindergarh appeared as PW4 and produced on file certificate regarding income of deceased as Ex.PW4/A. As per this certificate, deceased was earning around ₹1,50,000/- per annum in the year 2009-10. This certificate has been rightly rejected by the tribunal, as it has no evidentiary value. The information in this certificate was given on the basis of verification of Patwari and Secretary, Municipal Committee, who have not been examined. PW6 Ajay Kumar has proved that deceased was having a commercial electricity connection for his shop. His testimony is relevant only to the extent that deceased was having a business establishment at ITI Road, Mohindergarh. However, it cannot be helpful in assessing income of the deceased. PW7 Dinesh Kumar had purchased UPS, 'UFS box', battery, generator, computer etc. of the shop of deceased for a sum of ₹3,20,678/-. Learned counsel for the claimants tendered in evidence bank statement of deceased as Ex.P4 (10 pages), fee receipts of children of deceased Ex.P7, electricity bill Ex.P11, bills of purchase of material for the shop of deceased Ex.P12 (38 pages), bill book of the shop (50 pages) as Ex.P14, book of accounts of shop Ex.P15 to Ex.P17 while closing the evidence.

From the evidence produced on file, it is apparent that besides oral statement of wife of deceased, documentary evidence, which is relevant is Ex.P4, which is copy of statement of accounts of deceased. It shows that in the account of deceased, following deposits were made from time to time:-

Sr. No.	Date	Amount deposited (In Rupees)
01.	08.01.2010	20,000/-

Sr. No.	Date	Amount deposited (In Rupees)
02.	01.03.2010	20,000/-
03.	16.04.2010	10,000/-
04.	20.04.2010	18,000/-
05.	14.05.2010	25,000/-
06.	15.05.2010	25,000/-
07.	07.07.2010	10,000/-
08.	06.08.2010	19,000/-
09.	04.09.2010	8,000/-
10.	07.10.2010	25,000/-
11.	08.10.2010	15,000/-
12.	20.12.2010	10,000/-
13.	12.01.2011	20,000/-
14.	27.01.2011	16,000/-

The withdrawal were made from the account either on the same day or a few days thereafter. Learned counsel for claimants could not make out as what could be the reason for deposit of amount in bank in cash and then withdrawal of that amount on same day or next day. Though these deposits may not reflect income of the deceased but from this evidence, it can be inferred that the deceased was having income and was making deposits in his bank account. He was also paying fee of his son and daughter and copies of which have been placed on file as Ex.P7 and their other school expenses running into thousands of rupees. The bills of purchase of material also show about his business activity. The tribunal while assessing income of the deceased has observed that deceased "must have been earning some reasonable amount, as it is proved that he was running a mobile shop". With this observation, his income was assessed as ₹8,000/- per month.

In the financial year 2010-11, income upto ₹1,60,000/- per annum was not taxable, as such income of the deceased can be assessed below taxable limit. Though no direct evidence regarding income of the deceased has come on record, but keeping in view the fact that he has been making deposits in the bank account from time to time and his children were studying in a good school, I am of the opinion that income of the deceased can safely be taken as ₹10,000/- per month.

As per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra),*** claimants are entitled to 40% addition in the income of the deceased towards loss of future prospects instead of 50%, as allowed by the tribunal. Claimants are also entitled to compensation of ₹70,000/- under the conventional heads.

As a sequel of my above discussion, compensation to which the claimants are entitled, is reassessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹10000 per month
(ii)	40% of above (i) to be added as loss of future prospects	(₹10000+₹4000)= ₹14000 per month
(iii)	Deduction of 1/4th towards personal expenses of the deceased	(₹14000-₹3500)= ₹10500 per month
(iv)	Compensation after multiplier of 16 is applied	(₹10500X12X16)= ₹2016000
(v)	Loss of consortium	₹40000
(vi)	Loss of estate	₹15000
(vii)	Funeral expenses	₹15000
Total		₹20,86,000/-

In view of above discussion, appeal (FAO No.171 of 2014) filed by insurer of the offending vehicle is dismissed, whereas appeal (FAO No.6363 of 2013) filed by the claimants is allowed. The award of the tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹19,53,000/- to ₹20,86,000/- for death of Ashok Kumar. Liability to pay the amount of compensation shall be as per award.

The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realisation. The amount of enhanced compensation shall be apportioned between the claimants as follows:-

(i)	Appellant-claimant No.1-widow	: 40%
(ii)	Appellant-claimants No.2 and 3-children	: 20% each
(iii)	Appellants-claimants No.4 and 5-parents	: 10% each.

Respondent-insurance company will deposit the shares of appellants-claimants, who are major, in their bank accounts or pay the same through demand drafts. The share of minor appellant(s)-claimant(s) will be deposited in some nationlized bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minors as required at the time of deposit of the amount and the minors shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their names after the date of attaining majority. The above direction has been issued to save minor claimants from unnecessary harassment caused due to directions the bank usually gives to bring the order of the Tribunal to get the payment even after attaining the age of majority.

The claimants shall also be entitled to costs of this appeal. In case of demise of any of above claimant(s) before his/her share of compensation is disbursed, the same shall be apportioned equally amongst other surviving claimants.

March 25, 2019. **(SURINDER GUPTA)**
Sachin M. **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No