IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1)

FAO No.45 of 2015 (O&M)
Date of Decision: February 28, 2019.

National Insurance Company Limited
..........APPELLANT(s).

VERSUS

Surinder Kaur and others
........RESPONDENT(s).

(2)

FAO No.90 of 2015 (O&M)

Surinder Kaur and others
..........APPELLANT(s).

VERSUS

Surinder Kumar and another
........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.C. Kapoor, Advocate
for the appellant-N.I.C. in FAO-45-2015
and for respondent No.2 in FAO-90-2015.

Mr. Jaideep Verma, Advocate
for respondents No.1 to 3 in FAO-45-2015
and for appellants-claimants in FAO-90-2015.

None for respondent No.4 in FAO-45-2015
and for respondent No.1 in FAO-90-2015

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SURINDER GUPTA, J.

Motor Accident Claims Tribunal, Rupnagar (later referred to as the tribunal) vide award dated 09.10.2014, awarded compensation of ₹20,78,000/- for the death of Kulwant Singh (later referred to as the deceased) in a motor vehicle accident with Alto Car bearing registration No.PB-07-W-7552, (later referred to as the offending vehicle).

The claimants have filed appeal bearing FAO No.90 of 2015 claiming enhancement of compensation, while insurer of the offending vehicle National Insurance Company Limited has filed appeal bearing FAO No.45 of 2015 challenging the amount of compensation awarded to the claimants.

As the only issue pressed in these appeals relates 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	Kulwant Singh
(ii)	Date of accident	25.10.2013
(iii)	Age of the deceased	48 years
(iv)	Income of the deceased assessed by the tribunal	₹15000 p.m.
(v)	30% addition towards loss of future prospects	₹15000+4500=19500 p.m.= ₹234000 per annum
(v)	Deduction towards personal expenses 1/3rd	₹234000-₹78000= ₹156000 p.a.
(vi)	Multiplier applied 13	₹156000X13 = ₹2028000/-
(vii)	Loss of consortium	₹25000
(viii)	Transportation charges	₹5000
(ix)	Funeral expenses	₹10000
(x)	Medical expenses	₹10000
Total		₹20,78,000/-

Learned counsel for the appellants-claimants has argued that the deceased left behind Ravinder Singh, his mentally retarded son and it is proved on file that he is 100% mentally retarded and is required to be looked after throughout his life. Due to this fact, the deceased had to spend more towards care and medical assistance of his son and keeping in view the above fact, the deduction towards personal expenses of the deceased be made as 1/4th though as per the law settled in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121,*** 1/3rd deduction is to be made from income of the deceased who left behind three dependants. He has further argued that after the accident, the deceased remained admitted in Civil Hospital, Rupnagar and then PGI, Chandigarh, where he died on 30.10.2015. The medical expenses of ₹10,000/- as awarded by the tribunal is on lower side. Claimants, who belong to village Raipur, Tehsil Chamkaur Sahib, District Rupnagar had to spend a lot of amount on taking the deceased firstly to Civil Hospital, Rupnagar, then to PGI, Chandigarh and then transporting his dead body to village Raipur and the amount of compensation awarded by the tribunal under the head of transportation charges is inadequate. The claimants are also entitled to ₹70,000/- under the conventional heads, which has been allowed by the tribunal as ₹35,000/-.

Learned counsel for National Insurance Company, insurer of the offending vehicle, has argued that the tribunal has taken income of the deceased as ₹15,000/- per month which is on higher side. It is contended that deceased was a driver on a truck and his monthly salary is proved to be ₹10,000/- per month. The tribunal has erred while taking his monthly salary as ₹15,000/- without any basis. He has further 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,*** addition of 25% can be made in the proved income of the deceased towards loss of future prospects, however, the tribunal has allowed 30% addition in the assessed income of the deceased.

Firstly, I take the issue of assessment of monthly income of the deceased. The tribunal while assessing the monthly income of the deceased, has taken note of the fact that he was truck driver and was getting ₹10,000/- per month as salary. He was also running a dairy and a register regarding sale of milk Ex.PW4/B was produced on file by PW4 Jaswant Singh. Surinder Singh Panch had stepped into the witness box as PW6 and stated that after the death of Kulwant Singh, his wife Surinder Kaur had sold buffalos to him on 16.11.2013 for a sum of ₹2,84,000/- vide receipt Ex.PW6/B. Keeping in view the above facts, I am of the opinion that no interference in the income of the deceased as assessed by the tribunal is called for.

The deceased left behind his wife and two children, out of whom, one is mentally retarded and is claimed to be 100% disabled. As per the law settled in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra),*** 1/3rd of income of the deceased is required to be deducted towards his personal expenses keeping in view the number of dependants left behind him. However, it is a case where the deceased had left behind a 100% disabled child. During his life time, the deceased had to take care of his mentally retarded child and had also to make arrangement for his survival and upkeep after his death. Certainly, he would have been spending/saving some amount for his mentally retarded child and the submission of learned counsel for the appellants-claimants that deduction of 1/4th instead of 1/3rd should be made towards personal expenses of the deceased, finds merit.

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 25% addition in the income of the deceased towards loss of future prospects of the deceased instead of 30% as awarded by the tribunal and ₹70,000/- under the conventional heads. In the absence of any evidence, compensation of ₹5000/- awarded by tribunal towards transportation and ₹10,000/- towards medical expenses call for no revision.

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

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹15000 per month
(ii)	25% of above (i) to be added as loss of future prospects	(₹15000+₹3750)= ₹18750 per month
(iii)	Deduction of 1/4th towards personal expenses of the deceased	(₹18750-₹4688)= ₹14062 per month
(iv)	Compensation after multiplier of 13 is applied	(₹14062X12X13)= ₹2193672
(v)	Loss of consortium	₹40000
(vi)	Loss of estate	₹15000
(vii)	Funeral expenses	₹15000
(viii)	Transportation charges	₹5000
(ix)	Medical expenses	₹10000/-
Total		₹22,78,672/-

In view of above discussion, appeal (FAO No.45 of 2015) filed by insurer of the offending vehicle is dismissed, whereas appeal (FAO No.90 of 2015) filed by the claimants is allowed. The award of the tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹20,78,000/- to ₹22,78,672/- for death of Kulwant Singh. 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 (including share of claimant No.2 as he is 100% disabled being mentally retarded)	: 80%
(ii)	Appellant-claimant No.3	: 20%

Respondent-insurance company will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts. 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.

(SURINDER GUPTA)
JUDGE

February 28, 2019.
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No