IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(1)

FAO No.647 of 2014 (O&M)
Date of Decision: May 14, 2019.

Sharda Devi

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

VERSUS

Ram Ratan and others

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

(2)

FAO No.990 of 2014 (O&M)

Smt. Prem Lata and others

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

VERSUS

Ram Ratan and others

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

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikas Lochab, Advocate
for the appellant in FAO-647 of 2014.

Mr. Lokesh Sharma, Advocate
for appellants in FAO-990-2014.

Ms. Vandana Malhotra, Advocate
for respondent No.3-insurance company.

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<u>SURINDER GUPTA, J.</u>

Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the tribunal') vide award dated 06.08.2013 allowed compensation of ₹3,47,600/- for death of Ashok Kumar, son of appellant (in FAO-647-2014); ₹3,72,800/- for death of Amit Bansal, son of appellant No.1 and brother of appellants No.2 and 3 (FAO-990-2014) in a motor vehicle accident with truck bearing registration No.HR-66-8827.

As the only issue pressed in these appeals relate to quantum of compensation as awarded by tribunal, detailed facts of the case are being skipped for the sake of brevity.

FAO-647-2014

The compensation awarded by the tribunal for death of Ashok Kumar was computed as follows:-

(i)	Name of the deceased	Ashok Kumar
(ii)	Date of accident	02.07.2012
(iii)	Age of the deceased	28 years
(iv)	Income of the deceased	₹4200 p.m.
(v)	Deduction towards personal expenses 1/2	₹4200-2100=₹2100 p.m. i.e. ₹25200 p.a.
(vi)	Multiplier applied 13	₹25200X13 = ₹327600/-
(vii)	Funeral expenses	₹10000
(viii)	Loss of love and affection	₹10000
Total		₹3,47,600/-

Learned counsel for the appellant has argued that deceased Ashok Kumar was employed with M/s Bhawin Travellers as Manager-cum-Driver and was getting ₹15,000/- per month as salary. Certificate to this effect was placed on file as Ex.P6. The tribunal has assessed his income as ₹4,200/- per month, which is much below the minimum wages prescribed by the State of Haryana for an unskilled worker. Drivers fall in the category of skilled workers and the tribunal could take his salary at least equivalent to a skilled worker. He further argues that as per the law settled in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009,*** claimant is entitled to addition of 40% in the income of the deceased towards loss of future prospects and is also entitled to compensation under the conventional heads. The age of the deceased was

28 years at the time of accident, as such, multiplier applicable in this case is 17 instead of 13 as applied by the tribunal.

Learned counsel for respondent-insurance company has argued that in the absence of any evidence, income of the deceased has been rightly taken by the tribunal, however, she has no objection for grant of compensation to the claimant as per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***.

To prove income of deceased Ashok Kumar, the claimant produced on file salary certificate alleged to have been issued by M/s Bhawin Travellers, stating therein that the deceased was employed as Manager-cum-Driver and drawing salary of ₹15,000/- per month. Certificate was not relied upon by the tribunal on the ground that it was not bearing the signature of any Director of M/s Bhawin Travellers and no person from that concern appeared to prove this certificate or produced the record regarding salary being paid to the deceased. I find no reason to disagree with the tribunal on this score or to rely on certificate Ex.P6 to hold the income of deceased as ₹15,000/- per month. However, keeping in view the fact that deceased was a driver, his income can be taken as minimum wages prescribed for a skilled labourer, which was ₹5,237.17p as on 01.01.2012 as per letter issued by Labour Commissioner, Haryana dated 21.02.2012. Income of deceased Ashok Kumar, as such, is taken as ₹5,300/- per month. The claimant is also entitled to 40% addition in the income of the deceased towards loss of future prospects and multiplier applicable in this case is 17 as deceased was 28 years of age. Claimant is also awarded a sum of ₹30,000/- under the conventional heads i.e. loss of estate and funeral expenses.

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

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹5300 per month
(ii)	40% of above (i) to be added as loss of future prospects	(₹5300+₹2120)= ₹7420 per month
(iii)	Deduction of 1/2 towards personal expenses of the deceased	(₹7420-₹3710)= ₹3710 per month
(iv)	Compensation after multiplier of 17 is applied	(₹3710X12X17)= ₹756840
(v)	Loss of estate	₹15000
(vi)	Funeral expenses	₹15000
Total		₹7,86,840/-(rounded off **₹7,86,850/-**).

<u>FAO-990-2014</u>

The compensation awarded by the tribunal for death of Amit Bansal was computed as follows:-

(i)	Name of the deceased	Amit Bansal
(ii)	Date of accident	02.07.2012
(iii)	Age of the deceased	22 years
(iv)	Income of the deceased	₹4200 p.m.
(v)	Deduction towards personal expenses 1/2	₹4200-2100=₹2100 p.m. i.e. ₹25200 p.a.
(vi)	Multiplier applied 14	₹25200X14 = ₹352800/-
(vii)	Funeral expenses	₹10000
(viii)	Loss of love and affection	₹10000
Total		₹3,72,800/-

Learned counsel for the appellants has argued that deceased was employed as Office Clerk with Asmitanjali Buildcon Private Limited Company, Delhi and was getting ₹12,000/- per month as salary. Certificate to this effect was placed on file as Ex.PW6/B. The tribunal has ignored this certificate while assessing his income as ₹4,200/- per month, which is much below the minimum wages prescribed by the State of Haryana even for an unskilled worker. The deceased was 10+2 and was working as Office Clerk, as such, the tribunal could take his salary at least equivalent to a semi-skilled worker. He further argues that as per the law settled in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009,*** claimants are entitled to addition of 40% in the income of the deceased towards loss of future prospects and are also entitled to compensation under the conventional heads. The age of the deceased was 22 years at the time of accident, as such, multiplier applicable in this case is 18 instead of 14 as applied by the tribunal.

Learned counsel for respondent-insurance company has argued that in the absence of any evidence, income of the deceased has been rightly taken by the tribunal, however, she has no objection for grant of compensation to the claimants as per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***.

To prove income of deceased Amit Bansal, the claimants produced on file salary certificate alleged to have been issued by Asmitanjali Buildcon Private Limited Company, Delhi, mentioning therein that the deceased was employed as Office Clerk and drawing salary of ₹12,000/- per month. The tribunal ignored salary certificate Ex.PW6/B with the observation that this certificate is not having seal of the office of Asmitanjali Buildcon Private Limited and the Director or any other witness from that concern was not examine to prove this certificate. I find no fault with the reasoning as recorded by the tribunal while ignoring salary certificate Ex.PW6/B. The claimants could examine any witness from Asmitanjali Buildcon Private Limited to prove that the deceased was employed with them and they were paying salary @ ₹12,000/- per month to him. In the absence of any documentary evidence on record proving monthly salary of deceased, the tribunal has assessed income of the deceased as ₹4,200/- per month, which is lower than the minimum wages for unskilled worker fixed by the Labour Commissioner, Haryana vide its letter dated 21.02.2012. The deceased was stated to be 10+2 pass and working as Clerk. I agree with the contention of learned counsel for the appellants that keeping in view the educational qualification of the deceased, his status can be compared with a semi-skilled worker. The minimum wages for semi-skilled worker as prescribed by the Labour Commissioner, Haryana vide aforesaid letter, was ₹4,977.17p, as such, income of the deceased is assessed as ₹5,000/- per month. As per the law settled in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra),*** the claimants are entitled to 40% addition in the income of the deceased towards loss of future prospects and multiplier applicable in this case is 18 as deceased was 22 years of age at the time of accident. Claimants are also awarded a sum of ₹30,000/- under the conventional heads i.e. loss of estate and funeral expenses.

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

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹5000 per month

Sl.No.	*Heads*	*Calculation*
(ii)	40% of above (i) to be added as loss of future prospects	(₹5000+₹2000)= ₹7000 per month
(iii)	Deduction of 1/2 towards personal expenses of the deceased	(₹7000-₹3500)= ₹3500 per month
(iv)	Compensation after multiplier of 18 is applied	(₹3500X12X18)= ₹756000
(v)	Loss of estate	₹15000
(vi)	Funeral expenses	₹15000
Total		**₹7,86,000/-**

Both the appeals have merits and are accepted. The award of the tribunal is modified and the compensation allowed to appellant-claimant Sharda Devi (in FAO-647-2014) is enhanced from ₹3,47,600/- to ₹7,86,850/- for death of her son Ashok Kumar; and to appellants-claimants (in FAO-990-2014) is enhanced from ₹3,72,800/- to ₹7,86,000/- for death of Amit Bansal. 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 in FAO-990-2014 shall be apportioned between the appellants-claimants as follows:-

(i) Appellant-claimant No.1-mother : 80%

(ii) Appellants-claimants No.2 and 3 (siblings) : 10% each

Respondent-insurance company will deposit the shares of appellants-claimants in both the appeals in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of these appeals.

(SURINDER GUPTA)
JUDGE

May 14, 2019.
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No