IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-569-2015(O&M)

Kamlesh and others

...Appellants

Versus

Gulshan Kumar and others

...Respondents

(2) FAO-1831-2015(O&M)

New India Insurance Company Ltd.

...Appellant

Versus

Kamlesh and others

...Respondents

Date of Decision:-25.11.2019

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

Present: Mr.Raja Sharma, Advocate for
Mr.Kamal Sharma, Advocate
for the appellants in FAO-569-2015 and
for respondents No.1 to 5 in FAO-1831-2015.

Mr.Vinod Gupta, Advocate for the appellant
in FAO-1831-2015 and for respondent No.3 in
FAO-569-2015.

Mr.Sushil Bhardwaj, Advocate
for respondents No.1 and 2 in FAO-569-2015 and
for respondents No.6 and 7 in FAO-1831-2015.

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<u>H.S. MADAAN, J.</u>

<u>CM-5559-CII-2015 in</u>
<u>FAO-1831-2015</u>

For the reasons mentioned in the application, the same is allowed and delay of 9 days in filing of FAO-1831-2015 is condoned.

FAO-569-2015(O&M) and
FAO-1831-2015(O&M)

By this order, I shall dispose of two FAOs i.e. FAO-569-2015(O&M) filed on behalf of the claimants and FAO-1831-2015(O&M)filed on behalf of the insurance company, which have arisen out of the same accident.

Briefly stated, the facts of the case are that one Rishi Pal son of Sh.Suraj Bhan aged about 41 years working as Mali -cum- Chowkidar in Public Health Department, Haryana posted at Nilokheri, District Karnal had unfortunately died in a road side accident, which took place on 6.7.2013 at about 8:00 a.m. in the area near fields of Lakhmi son of Molu Ram, village Jamba, statedly on account of rash and negligent driving of canter bearing registration No.HR41E-0134 (hereinafter referred to as the offending vehicle) by respondent No.1 Gulshan Kumar.

The legal representatives of such deceased, namely, his widow – Smt.Kamlesh, minor sons Ajay and Vijay, mother – Smt.Parkashi Devi and father – Sh.Suraj Bhan had filed a claim petition under Section 166 of Motor Vehicles Act against respondents i.e. Gulshan Kumar – driver, Arjun Dass – owner and New India Assurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.50 lakhs.

On being put to notice, all the three respondents appeared and contested the claim petition.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as the Tribunal) partly allowed the claim petition vide award dated 1.12.2014 and compensation of Rs.31,38,184/- with interest @ 7.5% per annum from the date of the claim petition till final realization was awarded to the claimants, payable by respondents No.1 to 3 jointly and severally.

The break-up of the compensation awarded has been given in para No.24 of the award, which is as under:

Sr.No.	HEADS	CALCULATION
i)	Salary/Income	Rs.18,090/- per month
ii)	30% of (i) above to be added as future prospects	Rs.{18,090 + 5,427/-} = Rs.23,517/- per month
Iii)	¼ of (ii) deducted as personal expenses of the deceased	{Rs.23,517 – Rs.5,879} = Rs.17,638/- per month
iv)	Compensation after applying multiplier of '14'	{Rs.17,638 x 12 x 14} = Rs.29,63,184/-
v)	Loss of consortium	Rs.50,000/-
vi)	Loss of care and guidance for minor children	Rs.1,00,000/-
vii)	Transportation & Funeral expenses	Rs.25,000/-
	Total compensation awarded {Total of (iv) and (vii)}	Rs.31,38,184/-

The apportionment and mode of payment are detailed in the award itself.

It may be mentioned here that while awarding the compensation the Tribunal has taken into consideration the last pay drawn of deceased in the month of June, 2013 as Rs.18,930/-. A sum of Rs.500/- as medical allowance, Rs.100/- as conveyance allowance and Rs.240/- as washing allowance, total Rs.840/- were deducted from the monthly salary of deceased for the reason that the same were personal to him and balance amount of Rs.18,090/- was taken to be monthly income of the deceased. Adding 30% amount towards future prospects, monthly income of the deceased was arrived as Rs.23,517 (18090 + 5427). Keeping in view the number of dependent family members, 1/4th of the amount was deducted towards personal and living expenses of the deceased, in that way the dependency of the claimants was worked out to Rs.17,638/- (23517 – 5879) per month. Considering the age of the deceased, multiplier of 14 was applied and annual dependency was worked out to Rs.29,63,184 (17638 x 12 x 14). A sum of Rs.25,000/- towards funeral expenses, Rs.50,000/- towards consortium of widow of the deceased and Rs.1 lakh towards love and affection of the children were awarded to the claimants. Thus the total compensation payable was calculated as Rs.31,38,184/-.

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. 29,63,184 + 70,000 = 30,33,184/-.

Though it was established on the record that widow of the deceased namely Kamlesh was getting financial assistance to the tune of Rs.19,480/- per month and in terms of order Ex.R2, she would get that amount for a period of 12 years uptil 6.7.2025, the Tribunal rejected the the request of the respondents to deduct such amount from the compensation awarded to the claimants, that was wrongly done.

Learned counsel for the insurance company has referred to Apex Court judgment ***Reliance General Insurance Co. Ltd. Versus Shashi Sharma & Ors., 2016(4) RCR(Civil)569*** wherein it was observed that the amount to be given under Haryana Compassionate Assistance to the dependents of the Deceased Government Employees Rules, 2006 is to be deducted from amount receivable by the dependents.

In that way the amount can be calculated as Rs.19,480 x 12 x 12 = 28,05,120/-. Deducting that amount from the compensation payable that comes out to Rs.2,28,064/-.(30,33,184 - 28,05,120)

The Tribunal has wrongly awarded compensation of Rs.31,38,184/-. The same is reduced to Rs.2,28,064/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs. 2,28,064 /-. Other terms and conditions regarding apportionment in the original award shall remain the same. The share of the claimants shall be reduced proportionately.

With such modifications, FAO-1831-2015 filed on behalf of Insurance Company is allowed partly with costs.

If the amount of compensation has already been paid by the Insurance company, the claimants shall refund the same to the Insurance Company otherwise the Insurance Company shall be entitled to recover the difference in amount from the claimants as per law by way of filing an execution application before the Tribunal.

There is absolutely no reason to enhance the amount of compensation rather it has been reduced.

Consequently, FAO-569-2015 filed on behalf of the appellants/claimants stand dismissed with costs.

25.11.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No