IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4936 of 2016 (O&M)
Date of decision : December 17, 2019

M/s Cholamandalam MS General Insurance Company Limited
.....Appellant

Versus
Santosh Devi and others ....Respondents

FAO No. 5182 of 2016 (O&M)

Santosh Devi and others .....Appellants

Versus
Pawan Kumar and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Vandana Malhotra , Advocate
for the appellant (in FAO-4936-2016)
for respondent No.3 (in FAO-5182-2016)

Mr. Vishal Singh, Advocate for
Mr. Keshav Partap Singh, Advocate
for respondents No. 1 to 4 (in FAO-4936-2016)
for the appellants (in FAO-5182-2016)

Mr. Kuldip Singh Chaudhary, Advocate
for respondents No. 5 and 6 (in FAO-4936-2016)
for respondents No. 1 and 2 (in FAO-5182-2016)

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LISA GILL, J.

FAO No. 4936 of 2016 (M/s Cholamandalam MS General Insurance Company Limited Versus Santosh Devi and others) and FAO No. 5182 of 2016 (Santosh Devi and others Versus Pawan Kumar and others), are being decided by this common judgment as both these appeals arise out of award dated 11.02.2016 passed by the learned Motor Accident Claims Tribunal, SAS Nagar (Mohali) (hereinafter referred to as the 'Tribunal').

Both these appeals have been filed challenging the quantum of compensation awarded by the learned Tribunal on account of death of Manish Kumar.

FAO No. 5182 of 2016 has been filed by the claimants for enhancement of compensation awarded by the learned Tribunal on account of death of Manish Kumar.

FAO No. 4936 of 2016 has been preferred by the insurance company seeking reduction of the compensation as well as on the question of its liability.

Brief facts necessary for adjudication of the case are that the claimants i.e. parents and siblings of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Manish Kumar on 18.10.2014, in a motor vehicle accident, caused due to rash and negligent driving of the offending vehicle, i.e. Truck tipper bearing registration No. HR58-A-2868, by its driver – Pawan Kumar.

Learned Tribunal on considering the evidence on record, facts and circumstances concluded that Manish Kumar died in the accident which took place on 18.10.2014 due to rash and negligent driving of the offending Truck Tipper bearing registration No. HR58-A-2868 by its driver – Pawan Kumar. Learned Tribunal, while assessing the income of the deceased to be ₹10,000/- per month awarded a sum of ₹16,45,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. 50% increment on account of future prospects has been afforded. 50% deduction was effected. Multiplier of 18 was applied as the deceased was 22 years old at that time. Additionally, a sum of ₹25,000/- on account of funeral expenses was awarded.

Thus aggrieved, the insurance company as well as the claimants have filed these appeals, the former seeking to be absolved of its liability and in alternate reduction of compensation and the later seeking enhancement of compensation.

Learned counsel for the insurance company vehemently argues that the father of the deceased himself was driving the motorcycle in a negligent manner. The accident was caused due to his negligent act and not on account of any negligence on the part of the driver of Truck tipper bearing registration No. HR58-A-2868. Therefore, the appellant - insurance company, which had insured the said truck tipper, is not liable to pay compensation. In the alternate, it is submitted, excessive compensation has been awarded by the learned Tribunal. Income of the deceased – Manish Kumar has been wrongly assessed as ₹10,000/- per month with reference to income of a skilled labourer whereas the minimum wage of a skilled labourer in the State of Haryana of which the deceased and the claimants are residents of, was much less. Furthermore, increment at the rate of 50% on account of future prospects has been incorrectly awarded. Excessive compensation is, thus, argued to have been awarded by the learned Tribunal. Reduction thereof is sought. It is, therefore, submitted that the appeal filed by the insurance company be allowed and that of the claimants be dismissed.

Per contra, learned counsel for the claimants submits that inadequate compensation has been awarded by the learned Tribunal. Income of the deceased should be assessed at a much higher rate as he is proved to be running a shop for repair of cars. Moreover, compensation under the conventional heads, it is submitted, is meagre and should be enhanced as well. Learned counsel submits that there is no question of the insurance company being absolved of its liability. Finding of the learned Tribunal in this respect is stated to be correct. It is, thus, prayed, that the appeal filed by the claimants be allowed and that of the insurance company be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is an admitted fact that in the accident, which took place on 18.10.2014, Manish Kumar, his father Rajinder Kumar as well as one Varinder lost their lives. FIR No. 224 dated 18.10.2014 (Ex.P1) was registered on the statement of Suresh Kumar son of Ram Chander. Said Suresh Kumar lost his son Varinder Kumar in the accident. It is clearly mentioned in the FIR that the accident took place due to rash and negligent act of the driver of offending Truck tipper bearing registration No. HR58-A-2868. PW2 Jagjeet Singh, an eye witness of the accident in question has succinctly proved the accident in question being caused due to rash and negligent act of driver of Truck tipper – Pawan Kumar. I have gone through the statement of PW2. It is rightly observed by the learned Tribunal that nothing material could be extracted from the cross examination of PW2, which could be of any aid to the respondents in the claim petition. Argument that the propounder of the FIR has not been examined and the same casts a dent on the claimants' case, is clearly devoid of any merit in the wake of positive evidence on record. Furthermore, it is a matter of record that FAO No. 4935 of 2016 filed by the insurance company in respect to the claim arising out of the death of Rajinder Kumar has been dismissed on 27.08.2016. Thus, argument on behalf of the insurance company that it is not liable to pay compensation amount or that there is a element of contributory negligence in this case is rejected being devoid of any merit.

Insofar as quantum of compensation is concerned, the claimants have pleaded that Manish Kumar was running a motor car repair shop. PW1 Santosh Devi has testified that Manish Kumar, her son had learnt the work of car repair from one Jasbir Singh at his workshop at Ambala Cantt. He got training for about two years with Jasbir Singh. Thereafter, in the month of November/December, 2012, her husband - Rajinder Kumar (father of Manish Kumar) facilitated construction of a shop in the courtyard of their house at village Singha Wala on Ambala to Hisar main road. Manish Kumar started operating his own workshop from the said premises from 01.01.2013. PW1 claimed Manish Kumar to be earning ₹20,000/- per month. PW3 Balbir Singh son of Charan Singh, who is a co-villager of the deceased, deposed that he earlier used to get his Alto car serviced and repaired at the workshop of Jasbir Singh. Manish Kumar started learning the work of car repair and service from Jasbir Singh and since Manish Kumar started operating his own car repair workshop, PW3 stopped going to the workshop of Jasbir Singh and obtained the same services at the workshop of Manish Kumar. PW3 further stated that Manish Kumar was a good mechanic and was earning about ₹20,000/- per month. Doubtlessly, there is no evidence on record to indicate the exact income earned by Manish Kumar. However, at the same time, there is no evidence to rebut the categoric claim of the respondents – claimants to the effect that Manish Kumar was working as a car mechanic.

It is pertinent to note at this juncture that father of the deceased namely Rajinder Kumar, who himself unfortunately lost his life in the accident in question, was running a foundry. Learned counsel for the insurance company does not deny that Rajinder Kumar (father of deceased) was an income tax payee. The same is reflected in order dated 27.08.2016 passed in FAO No. 4935 of 2016 as well. In the given facts and circumstances, the deceased has rightly been accepted as a skilled labourer by the learned Tribunal. As per notification dated 14.08.2014, minimum wage of a highly skilled labourer w.e.f. 01.11.2014 was ₹9450/-. In the State of Punjab, minimum wage at this time w.e.f. 01.09.2014 was about ₹9369/-. The accident, in this case, took place on 18.10.2014 in the State of Punjab whereas admittedly the deceased as well as the claimants are the residents of the State of Haryana. In the given factual matrix and considering the evidence on record, I find it just and expedient to maintain income of the deceased as assessed by the learned Tribunal at ₹10,000/- per month. There is no ground whatsoever to either reduce or enhance the said income. The deceased was admittedly 22 years old, therefore, in terms of the guidelines of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increment on account of future prospects at the rate of 40% (₹4,000/-) instead of 50% has to be afforded, which takes income of the deceased to ₹14,000/- per month. I do not find any merit in the argument raised by learned counsel for the claimants that deduction of 1/3rd should be applied in this case. The deceased was a Bachelor. His father was admittedly earning though unfortunately both the father and son died in the same accident. Thus, in view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, 50% deduction is to be applied, thereby rendering income of the deceased to be ₹7000/-(14000-7000). Applying a multiplier of 18, dependancy of the claimants is assessed as ₹15,12,000/- (₹7000x12x18). The claimants are also entitled to ₹15,000/- each for funeral expenses (instead of ₹25,000) and loss of estate. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333** and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others,** claimant-appellant No. 1 i.e. mother of the deceased is entitled to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹15,82,000/-, instead of ₹16,45,000/- which is detailed as under:-

Loss of dependency(₹7000x12x18)	₹15,12,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹15,82,000/-

It is noticed that disbursement of the compensation beyond ₹9 lakhs had been stayed. The rate of interest as awarded by the learned Tribunal is maintained.

With the abovesaid modification in the amount of compensation, both the appeals i.e. FAO No. 4936 of 2016 filed by the insurance company and FAO No. 5182 of 2016 filed by the claimants, are disposed of.

(Lisa Gill)
Judge

December 17, 2019
rts

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