IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 15.03.2019

FAO No.5275 of 2016 (O&M)

Laxmi and others ... Appellants

Versus

Sanjay Kumar and another ... Respondents

FAO No.5578 of 2016 (O&M)

Laxmi and another ... Appellants

Versus

Sanjay Kumar and another ... Respondents

FAO No.5579 of 2016 (O&M)

Kiran and others ... Appellants

Versus

Sanjay Kumar and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Anshuman Dalal, Advocate for the appellants.
Mr. Manmohan Jain, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5275, 5578 and 5579 of 2016 as these have emerged out of the same award dated 21.10.2015 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been assessed on account of deaths of Rajbir, Pardeep and Raj Kumar in a motor vehicular accident that took place on 31.12.2014.

The appeals have been preferred by the claimants seeking enhancement of compensation in respect of deaths of Rajbir, Pardeep and Raj Kumar, respectively.

CM No.17881-CII of 2016 in FAO No.5275 of 2016

Prayer in this application is for condonation of delay of 128 days in filing the appeal.

In view of averments made in the application supported by an affidavit of Smt. Laxmi, one of the appellants coupled with that provisions of the Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, application is allowed and delay of 128 days in filing the appeal is condoned subject to the condition that the claimants shall forgo interest for the period of delay, in case compensation is enhanced.

FAO No.5275 of 2016

The Tribunal has awarded Rs.9,27,200/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.8100/-
2. Multiplier	14
3. Deduction for personal expenses	$1/3^{rd}$
4. Loss of dependency	Rs.9,07,200/-
5. Expenses on funeral, loss of estate and loss of love and affection	Rs.20,000/-

The plea of claimants is that deceased Rajbir was earning Rs.10 lakhs per annum from agriculture and Rs.2 lakhs per annum from sale and purchase of cattle.

The Tribunal has noticed that claimants have not produced any record pertaining to income from agriculture as well as sale and purchase of cattle and assessed his income at Rs.8100/- per month by treating him skilled daily wager. Counsel for the appellants has not pointed out any materials on record to substantiate plea of the claimants with regard to avocation and income of the deceased except bald statement made by one of the claimants.

Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.5700/- per month. Claimants shall be entitle to addition in income for future prospects @ 25%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,98,000/- [(5700 x 12 x 14) + (25% future prospects) – ($1/3^{rd}$ deduction for personal expenses)].

Under conventional heads, compensation allowed by the

Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.8,68,000/- and compensation allowed by the Tribunal is reduced to the extent of Rs.59,000/- (9,27,000 – 8,68,000).

The appeal is disposed of in the aforesaid terms.

FAO No.5578 of 2016

In view of findings recorded in FAO No.5275 of 2016, income of the deceased is assessed at Rs.5700/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. However, in the light of judgments of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**, **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315** and **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270,** admissible deduction for personal expenses would be 50% and multiplier 18. In this manner, loss of dependency is calculated at Rs.8,61,840/- [(5700 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

Total compensation is Rs.8,91,840/- and the additional amount is Rs.1,42,840/- (8,91,840 – 7,49,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay, to be shared by the claimants in equal ratio. The amount falling to share of minor-Mohit shall be invested in fixed deposit payable on his attaining age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

FAO No.5579 of 2016

In view of findings recorded in FAO No.5275 of 2016, income of the deceased is assessed at Rs.5700/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.11,49,120/- [(5700 x 12 x 16) + (40% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.12,19,120/- and the additional amount is Rs.32,720/- (12,19,120 – 11,86,400), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay, to the minor claimants in equal ratio, to be invested in fixed deposit payable on their attaining age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

15.03.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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