IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.8147 of 2014 (O&M)
Date of Decision.09.12.2019

Shriram General Insurance Company Limited ...Appellant

Vs

Ramo Devi and others ...Respondents

2. **FAO No.754 of 2016 (O&M)**

Ramo Devi and another ...Appellants

Vs

Krishan and others ...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sehaj Mahajan, Advocate and
Mr. Ashwani Talwar, Advocate
for the appellant in FAO No.8147 of 2014 and
for respondent No.3 in FAO No.754 of 2016.

None for the appellant in FAO No.754 of 2016.

Mr. Sankalp, Advocate for
Mr. Saurabh Dalal, Advocate
for respondent No.3 in FAO No.8147 of 2014 and
for respondent No.1 in FAO No.754 of 2016.

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JAISHREE THAKUR J. (ORAL)

1. By this composite order, this Court proposes to dispose of two FAOs filed against the award passed by the Motor Accident Claims Tribunal, Sonipat.

2. FAO No.754 of 2016 has been preferred by the claimants seeking enhancement of compensation whereas FAO No.8147 of 2014 has been preferred by the insurance company against the excessive compensation as allowed by the said Tribunal.

3. In brief, the facts are that the accident took place on 18.02.2011

when the deceased was struck by the offending vehicle, which was being driven by respondent No.1 in a rash and negligent manner. The said vehicle struck the deceased, who was riding his bicycle and he suffered multiple injuries on his head and other parts of the body. The injured was then taken to Civil Hospital, Gannaur where he was given first aid treatment and eventually referred to PGIMS, Rohtak. On account of death that took place, the claim petition was filed seeking compensation.

4. The claim petition was contested by respondent Nos.1 and 2 i.e. driver and owner of the offending vehicle by filing joint written statement whereas respondent No.3, insurance company had filed separate written statement taking various objections thereon.

5. On the basis of evidence, the Tribunal came to hold that the claimants were entitled to a sum of ₹10,50,920/- on account of death in a motor vehicular accident that took place. It would be relevant to note that claimants were none other than the mother and father of deceased.

6. There is no representation on behalf of the appellants-claimants in FAO No.754 of 2016. However, the pleaded case of appellants is that the Tribunal while relying upon the First Information Report dated 18.02.2011 filed under Sections 279/337 IPC at Police Station, Gannaur as Ex.P3 and statement of Jaswant Singh, author of the said FIR, who was an eye witness held driver of the offending vehicle guilty of driving the car in a rash and negligent manner. The testimony of the eye witness based on evidence cannot be shattered. The Tribunal had taken income of the deceased as ₹4620/- per month whereas it ought to have been taken as ₹10,000/- per month. The amount assessed towards conventional heads is also on lower side, therefore, there is scope for enhancement.

8. Mr. Sehaj Mahajan and Mr. Ashwani Talwar, learned counsel appearing for the appellant in FAO No.8147 of 2014 assails the compensation by arguing that the same is not in consonance with the judgment as rendered by the Constitutional Bench in ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) 13 SCALE 12, 2017 (4) RCR (Civil) 1009.*** It is submitted that the annual income of the deceased has correctly been taken at ₹4620/- per month, however, future prospects @50% would not be available and has to be read as 40%, while further arguing that the Tribunal has erred in taking 1/3rd deduction towards personal expenses, however, the same should be reduced as half, since the deceased was a bachelor. It is argued that in case these two components are assessed correctly namely the future prospects and the deduction along with non-pecuniary benefits, the compensation would be drastically reduced.

9. I have heard learned counsel for the insurance company and have also perused the award allowing the compensation and find that the same is not in consonance with the judgment as rendered by the Hon'ble Supreme Court in ***Pranay Sethi's*** case (supra). Consequently, the compensation needs to be recalculated. The income of the deceased assessed at ₹4620/- per month is retained, however, increase of 40% towards future prospects is to be allowed instead of 50%. A deduction of 50% towards personal expenses is to be made, as the deceased was a bachelor but multiplier of 18 as adopted by the Tribunal is in consonance with the judgment referred to above. Further a sum of ₹30,000/- is to be added towards conventional heads.

10. In all, the compensation payable shall be ₹7,28,544/-, which is less than the compensation as assessed by the Tribunal. This amount would entail interest @7.5% from the date of filing of claim petition till its realization and shall be distributed equally between the claimants. However, the liability shall remain the same as has been assessed by the Tribunal. Consequently, the award passed by the Tribunal is modified to the above extent and the appeal filed by the claimants in FAO No.754 of 2016 seeking enhancement of compensation is dismissed and the appeal of the insurance company in FAO No.8147 of 2014 is allowed.

(JAISHREE THAKUR)
JUDGE

December 09, 2019
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No