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

(1) FAO No. 6121 of 2016 (O&M)
Date of decision: 10.5.2019

The Oriental Insurance Co. Ltd.
...Appellant

Versus

Sukhveer Kaur and others
...Respondents

(2) FAO No. 6945 of 2016 (O&M)

Sukhveer Kaur and another
...Appellants

Versus

Satpal Singh and others
...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Lalit Garg, Advocate,
for the appellant in FAO 6121 of 2016 and
for respondent No.3 in FAO 6945 of 2016.

Mr. Jasmeet Singh Ghuman, Advocate,
for the appellants in FAO 6945 of 2016 and for
respondents No. 1 and 2 in FAO 6121 of 2016.

JAISHREE THAKUR, J.

This order shall dispose of the above mentioned First Appeal against Order, as they arise out of the similar set of facts, challenging the Award dated 12.7.2016 passed by the Motor Accident Claims Tribunal, Bathinda, and involving similar question of law. FAO No. 6121 of 2016 has been filed by the appellant—Insurance Company for modification of the award, whereas FAO 6945 of 2016 has been filed by the appellants/claimants for enhancement of the compensation on account of death of their son.

In brief, the facts are that on 11.1.2014, deceased Mandeep Singh, along with one Hardeep Singh, was riding on motorcycle bearing registration No. PB-03R-7650 and when they reached near Village Lehra Saundha, they were hit by a Jeep bearing registration No. PB-03AF-3590, being driven by respondent No.1 in rash and negligent manner, as a result of which, both the occupants of the motorcycle received multiple injuries and Mandeep Singh died on the spot. It was alleged that the accident took place due to the rash and negligent driving of respondent No.1 and consequently DDR 11 dated 12.1.2014 came to be lodged with the Police Post, Bhucho Mandi. With these averments, a claim petition under Section 163-A of the Motor Vehicles Act (for short **'the Act')** was filed by the parents of the deceased claiming they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was hale and hearty and was not suffering from any ailment. He was the only son of his parents. He used to cultivate 4 acres of agricultural land of his father and besides this, he also used to cultivate 15-20 acres of land more by taking the same on lease basis. It was averred that his notional income was ₹3300/- per month. It further averred to due the untimely death of Mandeep Singh, the appellants/claimants have suffered a rude shock as well as loss of love and affection and support in later part of their lives and claimed compensation to the tune of ₹20 lacs.

The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable, no cause of action has accrued etc. Issues were framed and thereafter evidence was led by the parties.

After scrutiny of the evidence brought on record, the Tribunal held that the the accident was the result of rash and negligent driving of respondent No.1 and on assessment of the facts and evidence before it, took the notional income of the deceased as ₹3300/- as claimed by the claimants themselves and granted compensation of ₹6,59,600/-, which, as already noticed, has been now challenged in the instant appeals both by the claimants as well as the Insurance Company.

Learned counsel for the claimants/appellants submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the compensation amount awarded to the appellants deserves to be enhanced, whereas, on the the hand, learned counsel for the Insurance company submits that no documentary evidence has been adduced by the claimants to prove that the deceased was earning member and thus the Tribunal has gone wrong in assessing his income as ₹3300/- per month. The Tribunal has further gone wrong in adding 50% on account of future prospects and also awarded ₹ 1 lakh towards loss of love and affection and ₹25,000/- towards funeral expenses. It is submitted that as per Section 163-A of the Act the income of a non-earning person should have been taken ₹15,000/- per annum.

The Tribunal, after examining the evidence produced by the respective parties held that the deceased was 22 years of age and assessed his notional income as ₹3300/- per month. The Tribunal further following the law laid down in **Sarla Verma and others Versus Delhi Transport**

Corporation and another (2009) 6 SCC 121 added 50% to the monthly income of the deceased i.e. ₹4950/- (₹3300/- + ₹1650). The Tribunal further deducted 50% income of the deceased towards his personal and living expenses, held **the monthly dependency of the claimants to** ₹2475/- and by applying multiplier of 18, granted compensation to the tune of ₹5,34,600/-, while also granting ₹1,00,000/- on account of loss of love and affection to the claimants and ₹25,000/- towards funeral expenses, granted total compensation of ₹6,59,600/-.

Unfortunately, the claim petition has been filed under Section 163-A of the Act instead of under Section 166 of the Act and therefore, while granting compensation under Section 163-A the Second Schedule provided under the Act has to be adhered to. Section 163A of the Motor Vehicles Act provides for 'no-fault liability'. This provision gives an option to the claimant to claim fixed compensation without proving that the accident occurred due to any fault or negligence on the part of the offending vehicle. The principles relating to determination of liability and quantum of compensation are different for claims made under Section 163-A of the Act and claims under Section 166 of the Act. (**See Oriental Insurance Co. Ltd. v. Meena Variyal and Ors 2007 (2) R.C.R (Civil) 698).** Section 163-A of the Act and the Second Schedule in terms do not apply to determination of compensation in application under applications under Section 166.

Now coming to the income of the deceased, as claimed the claimants themselves, the notional income of the deceased is taken as ₹3300/- and 1/3rd is deducted towards his personal and living expenses, which comes to 2200/- and while applying the multiplier of 17, the compensation payable to the appellants are re-worked, as per Second Schedule of the Motor Vehicle Act and tabulated as under:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Mandeep Singh
(ii)	Date of accident	11.1.2014
(iii)	Age of the deceased	22 years
(iv)	Monthly income of the deceased	₹ 3300/-
(v)	1/3rd of (v) above deducted towards personal expenses	(₹ 3300-₹1100) = ₹ 2200/- per month
(vi)	Compensation calculated after applying the multiplier of 9	(₹2200X12X17) = ₹ 4,48,800/-
(vii)	Funeral expenses	₹ 2000
(viii)	Compensation for loss of estate	₹ 2500
Total		₹4,53,300

As a sequel of my discussion above, the appeal filed by the Insurance Company (FAO No. 6121 of 2016) is partly allowed and the award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 4,53,300/- with interest @7.5% from the date of the petition till the date of payment and consequently the claim for enhancement in FAO No. 6945 of 2016 is dismissed.

10.5.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No