IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7265 of 2015 (O&M)
Date of decision : July 23, 2019

Dhanpati Devi and another .....Appellants

Versus

Yashvir Sharma and others ....Respondents

FAO No. 8673 of 2015 (O&M)

The New India Assurance Co. Ltd. .....Appellant

Versus

Dhanpati Devi and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Deepak Suri, Advocate
for the appellant (in FAO No. 8673 of 2015)
for respondent No. 3 (in FAO No. 7265 of 2015)

Mr. Deepak Aggarwal, Advocate
for respondents No. 1 to 5 (in FAO No. 8673 of 2015)
for the appellants (in FAO No. 7265 of 2015)

Mr. S.N. Sharma, Advocate
for respondents No. 6 and 7(in FAO No. 8673 of 2015)
for respondents No. 1 and 2 (in FAO No. 7265 of 2015)

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LISA GILL, J.

This judgment shall dispose of FAO No. 7265 of 2015 (Dhanpati Devi and another Versus Yashvir Sharma and others) and FAO No. FAO No. 8673 of 2015 (The New India Assurance Co. Ltd. Versus Dhanpati Devi and others), which arise out of award dated 16.07.2015 passed by the learned Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as the 'Tribunal').

FAO No. 7265 of 2015 has been filed by the claimants for enhancement of the compensation awarded by the learned Tribunal on account of death of Ram Sukh vide award dated 16.07.2015

FAO No. 8673 of 2015 has been filed by The New India Assurance Company Limited primarily challenging the quantum of compensation, claiming the same to be excessive.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, children and mother of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Ram Sukh. It is pleaded that Ram Sukh died in a motor vehicle accident, which took place on 11.02.2014 due to rash and negligent driving of the offending vehicle Bolero car bearing registration No. HR-37D-0207 by respondent No. 1. The deceased was claimed to be 56 years and 07 months old and working as a skilled worker with Guru Nanak Dev Thermal Plant, Bathinda earning a salary of ₹42,520/- per month.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 11.02.2014 due to rash and negligent driving of the offending Bolero car bearing registration No. HR-37D-0207 by respondent No. 1. Learned Tribunal awarded a sum of ₹31,67,738/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹42,520/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 9 was applied. Income tax to the tune of ₹25,350/- per annum was deducted. Additionally, a sum of ₹1,00,000/- on account of loss of consortium besides a sum of ₹25,000/- on account of funeral expenses and transportation was awarded.

Learned counsel for the insurance company submits that excessive compensation has been awarded to the claimants. Deduction of

50% instead of 1/3rd should be effected. Compensation under the conventional head is also excessive, which is required to be reduced. It is, thus, prayed 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 no compensation has been awarded towards increment on account of future prospects. It is denied that deduction of 1/3rd has been incorrectly effected. It is fairly stated that compensation under the conventional heads is required to be re-worked in terms of 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** and **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018). It is, thus, prayed that compensation awarded to the claimants be enhanced.

Heard learned counsel for the parties.

No serious argument has been addressed on the question of contributory negligence on the part of the deceased. Keeping in view the evidence on record, finding of the learned Tribunal regarding death of the deceased in the motor vehicle accident caused due to rash and negligent driving of the offending vehicle, by respondent No. 1 is upheld.

The deceased was admittedly an employee with Guru Nanak Dev Thermal Plant, Bathinda earning a salary of ₹42,520/-. Income of the deceased has been correctly assessed as ₹42,520/- per month i.e. ₹5,10,240/- per annum. Income tax returns of the deceased were proved on record as Exs. P5 to Ex.P7. Income tax to the tune of ₹25,350/- per annum has been correctly deducted, as per the evidence on record. Thus, total income of the deceased after deducting tax is ₹4,84,890/- per annum (5,10,240-25,350). In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 15% (₹72,733/-) has to be afforded, as the deceased was a permanent employee and 56 years and 07 months old at the time of accident, which takes income of the deceased to ₹5,57,623/- per annum. I do not find any merit in the argument raised by learned counsel for the insurance company that deduction of 50% should be effected instead of 1/3rd. This is so for the reason that the claimants in this case are widow, aged mother and three major children of the deceased. Learned Tribunal has held the widow and aged mother to be dependent upon the deceased. There is no infirmity in the said finding, therefore, deduction of 1/3rd has been correctly applied. 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, deduction of 1/3rd has been correctly applied, thereby rendering income of the deceased to be ₹3,71,749/- (5,57,623-185874). Applying a multiplier of 9, dependancy of the claimants is, therefore, assessed as ₹33,45,741/- (₹3,71,749 x9). The claimants are also entitled to ₹15,000/- each (instead of ₹25,000/-)for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- instead of ₹1,00,000/- on account of loss of consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018) 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,** appellant No. 2 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 ₹34,55,741/- which is detailed as hereunder:-

Loss of dependency (₹3,71,749 x9)	₹33,45,741/-
Loss of spousal consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹34,55,741/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

FAO No. 7265 of 2015 filed by the claimants and FAO No. 8673 of 2015 filed by the insurance company are disposed of.

(Lisa Gill)
July 23, 2019 **Judge**
rts

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