IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No. 828 of 2015(O&M)**

Date of Decision: October 24 , 2019.

United India Insurance Co. Ltd. ...... APPELLANT(s)

Versus

Shalu Rani and others ...... RESPONDENT (s)

2. **FAO No. 1577 of 2015(O&M).**

Shalu Rani and others ...... APPELLANT(s)

Versus

Babu Singh and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Anshul Sharma, Advocate for
Mr. V.M.Gupta, Advocate
for the appellant in FAO No.828 of 2015.

Mr. RVS Chugh, Advocate and
Mr. J.S.Thind, Advocate
for the appellants in FAO No.1577 of 2015 and
for respondents No.1 to 3 in FAO No.828 of 2015.

Mr. A.S.Mann, Advocate
for respondent No.2 in FAO No.1577 of 2015 and
for respondent No.5 in FAO No.828 of 2015.

Mr. Vinod Gupta, Advocate
for respondent No.3 in FAO No.1577 of 2015.

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LISA GILL, J.

This judgment shall dispose of FAO No.828 of 2015 (United India

Insurance Co. Ltd. v. Shalu Rani and others) and FAO No.1577 of 2015 (Shalu Rani and others v. Babu Singh and others).

Both the appeals have been filed challenging the quantum of compensation, with the Insurance company filing FAO No.828 of 2015 seeking reduction of compensation and FAO No.1577 of 2015 has been filed by the claimants seeking enhancement of the compensation awarded to them vide impugned award dated 14.11.2014 passed by the learned Motor Accident Claims Tribunal, Mansa (hereinafter referred to as, the 'Tribunal').

Brief facts necessary for the adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Manish Kumar @ Munish Kumar. It is pleaded in the claim petition that Manish Kumar @ Munish Kumar succumbed to the injuries suffered by him in a motor vehicle accident which took place on 26.11.2013. FIR No.117 dated 26.11.2013 (Ex.P1) under Sections 279/337/338/ 427/304A IPC, Police Station City Mansa, was registered against driver of the offending vehicle on the statement of PW3 Pawan Kumar.

Learned Tribunal on consideration of the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of the offending mini bus bearing registration No.PB-31-2333 by its driver, respondent – Babu Singh. Finding of the learned Tribunal in this regard has attained finality.

Learned Tribunal while considering income of the deceased to be ₹16,000/-per month, awarded a total sum of ₹25,79,000/- to the claimants. He was held to be 31 years old at the time of the accident. Addition in income at the rate of 50% on account of future prospects was afforded. Deduction to the extent of 50% towards personal expenses was effected. Multiplier of 16 was applied. ₹25,000/- was awarded towards funeral expenses. ₹1,00,000/- was awarded to the claimant-widow on account of loss of consortium. ₹1,00,000/- was awarded to claimant No.2, besides, ₹50,000/- to claimant No.3 towards loss of love and affection.

Learned counsel for the claimants submits that income of the deceased has been wrongly assessed whereas, he was in receipt of over ₹20,000/- per month. It is further submitted that deduction of 50% has been incorrectly effected whereas, deduction of 1/3rd is required to be effected though, it is fairly stated that compensation under the conventional heads be reworked in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680*** and **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.**, ***2018(4) RCR(Civil) 333***. It is thus prayed that the appeal filed by the Insurance company be dismissed and that of the claimants be allowed, while awarding enhanced compensation.

Learned counsel for the Insurance company, per contra, submits that increment towards future prospects has been incorrectly awarded at the rate of 50%. No ground, it is submitted, is made out for enhancement of the compensation as the present is, in fact, a case for reduction thereof. It is thus prayed that the appeal filed by the Insurance company be allowed and that of the claimants be dismissed.

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

Claimants pleaded the deceased-Manish Kumar @ Munish Kumar to be employed with M/s Alpha Technical Services Private Limited. It is pleaded that Manish Kumar @ Munish Kumar secured an ITI Diploma in motor mechanics from Budhlada and thereafter, a Diploma in Mechanical Engineering from IASE University. He remained employed with various managements and at the time of his death, he was working as a Sales Manager with M/s Alpha Technical Services Private Limited, New Delhi. Salary Certificate (Ex.P14) and certificate (Ex.P15) have been relied upon. As per the Salary Certificate (Ex.P14), the deceased was in receipt of ₹22,025/- per month, the break-up of which has been duly given in para 20 of the impugned award passed by the learned Tribunal. There is a discrepancy in the amount mentioned in Ex.P15, therefore, learned Tribunal has assessed income of the deceased to be ₹16,000/- per month. Perusal of Ex.P14 and Ex.P15 reveals that the amount of sales incentive of ₹9,100/- is a variable, inconsistent and irregular amount. It is clearly mentioned in Ex.P14 that sum of ₹9,100/- is the sales incentive paid for the entire year of 2012-13. Learned Tribunal while assessing income of the deceased as ₹16,000/- per month, has taken care of any such variable incentive as may have been received by the deceased. Therefore, income of the deceased has been rightly assessed as ₹16,000/- per month by the learned Tribunal and is, thus, so upheld.

Claimants are held entitled to addition in income at the rate of 40%, instead of 50%, on account of future prospects in terms of the judgment of the Hon'ble Supreme Court in **Pranay Sethi (supra)**. However, there is merit in the argument of learned counsel for the claimants that deduction to the extent of 50% has been incorrectly effected keeping in view the number of claimants i.e., the widow, minor child and mother of the deceased. Accordingly, deduction of $1/3^{rd}$ is effected in this case. Multiplier of 16 has been correctly applied. Instead of ₹25,000/- towards funeral expenses, ₹15,000/- is awarded to the claimants, besides, another sum of ₹15,000/- on account of loss of estate. Instead of ₹1,00,000/- to the claimant-widow towards loss of consortium, she is held entitled for a sum of ₹40,000/-. The minor child is not entitled to ₹1,00,000/- on account of loss of love and affection. A sum of ₹40,000/- is awarded to her towards loss of parental consortium. The mother of the deceased is held entitled to a sum of ₹40,000/- on account of loss of filial consortium and not to ₹50,000/- towards loss of love and affection, in terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. (supra)** as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others).

Claimants/appellants in FAO No.1577 of 2015 are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	16,000 per month i.e., 1,92,000 per month
2.	Total income after addition at the rate of 40% on account of future prospects	1,92,000 + (1,92,000 **x** 40%) = 2,68,800
3.	Deduction of $1/3^{rd}$ on account of personal expenses	2,68,800 – (2,68,800 **x** 1/3) = 1,79,200
4.	Total dependancy after applying a multiplier of 16	(1,79,200 **x** 16) = 28,67,200
5.	Loss of estate	15,000
6.	Funeral expenses	15,000

7.	Loss of spousal consortium to appellant No.1	40,000
8.	Loss of parental consortium to appellant No.2	40,000
9.	Loss of filial consortium to appellant No.3	40,000
	Grand Total	₹30,17,200/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment and manner of disbursement as determined by the learned Tribunal shall remain the same.

Both the appeals are, accordingly, disposed of.

(LISA GILL)
JUDGE

October 24 , 2019.
'om'

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