IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. F.A.O No. 7326 of 2016 (O&M)

New India Assurance Co Ltd. ...Appellant

Versus

Suman Devi and others ...Respondents

2. F.A.O No. 7332 of 2016 (O&M)

New India Assurance Co Ltd. ...Appellant

Versus

Jyoti and others ...Respondents

3. F.A.O No. 7420 of 2016

Jyoti and others ...Appellants

Versus

Ritu and others ...Respondents

4. F.A.O No. 1567 of 2017

Suman Devi and others ...Appellants

Versus

Ritu and others ...Respondents

Date of decision:- 17.07.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vinod Gupta, Advocate, for the appellant
in FAO No. 7326 and 7332-2016 and

Mr. S.K. Yadav, Advocate
for the appellant in FAO No. 7420-2016
for respondent No. 1 to 4 in FAO No. 7332-2016

Mr. Devender Arya, Advocate
for the appellant in FAO No. 1567-2017 and
for respondent Nos. 1 to 4 in FAO No. 7326-2016

RITU BAHRI J. (Oral)

FAO No. 7420-2016

Issue notice of motion.

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Mr. Vinod Gupta, Advocate accepts notice on behalf of the Insurance Company.

F.A.O No. 7326, 7332, 7420 of 2016 and FAO No. 1567 of 2017

1. The above mentioned four appeals, are being disposed of by this common judgment, having arisen out of the impugned award dated 06.08.2016 passed by the learned Motor Accident Claims Tribunal, Narnaul.

Facts not in dispute

2. The facts which are not in dispute are that on 22.11.2013, Jagdish Singh (since deceased) along with Amit alias Ajit was going on motorcycle bearing registration No. HR-99QJ-9369 towards village Akoda, being driven by Amit alias Ajit at a high speed. At about 4:30/5:00 PM, their motorcycle hit the motorcycle of HR-19KG-2069 being driven by Vikender, who was coming from opposite side. Due to which Jagdish Singh as well as Amit alias Ajit (since deceased) fell on the road along with motorcycle and sustained injuries. Jagdish Singh, Amit @ Ajit and Vikender succumbed to the injures caused in the accident. The matter was reported to the police and case was registered.

3. As per the claimants, the ***deceased-Jagdish*** was earning Rs.11,300/- per month by doing the work of agriculture and driver. At the time of death, he was 43 years old. In 2nd claim petition, the case of claimants was that Vikender was agriculturist and was having ration depot and was doing the work of diary farming and animal husband and was earning Rs.15,000/- per month. He was 29 years old at the time of death.

4. While assessing the compensation in ***Suman Devi's case***, the Tribunal took the income of the ***deceased-Jagdish*** at Rs.6000/- per month

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and 1/4th was deducted towards personal expenses. 30% future prospects have been given and thereafter, applied the multiplier of 14, in view of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77.*** Further the Tribunal awarded Rs.15,000/- towards funeral expenses, Rs.25,000/- towards loss of estate, Rs.50,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium. The total compensation awarded to the claimants was Rs.11,72,800/-.

5. While assessing the compensation in ***Jyoti's case***, the Tribunal took the income of the deceased-Vikender at Rs.6000/- per month and 1/4th was deducted towards personal expenses. 50% future prospects have been given and thereafter, applied the multiplier of 15, in view of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77.*** Further the Tribunal awarded Rs.15,000/- towards funeral expenses, Rs.25,000/- towards loss of estate, Rs.50,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium. The total compensation awarded to the claimants was Rs.14,05,000/-. The Tribunal held that the accident occurred due to negligent driving of Amit @ Ajit

6. In FAO No. 7326-2019, learned counsel for the appellant-Insurance Company contends that the compensation awarded by the learned Tribunal is on the higher side and deserves to the reduced as the income of the deceased has been taken on higher side. Further it has been argued that the future prospects have been granted on the higher side, in view of ***Pranay Sethi's case (supra).*** Learned counsel is relying upon statement of R.W.1 Mahipal who while appearing in witness box stated that accident has caused due to suddenly arrival of dog on the road. Learned counsel submits

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that the statement of Mahipal clearly shows that there is no negligence on the part of Amit @ Ajit. It is a case of head on collusion and both the vehicles can be held liable equally for the accident.

7. In FAO No. 7332-2019, learned counsel for the appellant-Insurance Company contends that the compensation awarded by the learned Tribunal is on the higher side and deserves to the reduced as the income of the deceased has been taken on higher side. Further it has been argued that the future prospects have been granted on the higher side, in view of ***Pranay Sethi's case (supra)***

8. On the other hand, learned counsel for the appellants (FAO No. 7420-2016) submits that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced. It has further been argued that the income of Rs.6000/- has rightly been taken by the Tribunal

9. learned counsel for the appellants (FAO No. 1567-2017) submits that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced. It has further been argued that the income of Rs.6000/- has rightly been taken by the Tribunal and further the multiplier of 15 has wrongly been applied in view of PMR of the deceased. Reference has been made to matric certificate (Ex PX) of the deceased wherein date of birth of the deceased has been mentioned as 18.12.1983 and thus the deceased was below 30 years at the time of alleged accident.

10. I have heard learned counsel for the parties and perused the record.

11. The argument of learned counsel for the appellant-Insurance Company that the income of Rs.6000/- taken by the Tribunal is on the higher side, is rejected. However, the future prospects awarded to the

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claimants is on the higher side and deserves to be reduced. Further the statement of RW1 had rightly been held to be not trustworthy as he was directly relating to family of respondent No. 1. The Tribunal has rightly relied upon statement of eye witness P.W.3 Sanjay who deposed that the accident had occurred due to rash and negligent manner of driving of Amit @ Ajit, who was driving in a zig zag manner.

12. Further the multiplier of 15 in Suman Devi's has wrongly been applied. The multiplier of 17 should have been applied, as the deceased was below 30 years of age, in view of matric certificate of the deceased (Ex PX).

13. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** *wherein the* issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

> *"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no*

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dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.".

14. Since the compensation has been stayed by this Hon'ble Court, the compensation is being reassessed as per the judgments mentioned above:-

DECEASED-MANJEET

Sr. No.	***Heads***	***Calculations***
(i)	Income	Rs.6000/- per month
(ii)	25% of (i) above to be added as future prospects=	Rs.6000+Rs.1500=Rs.7500/- per month
(iii)	1/4th of (ii) deducted as personal expenses of the deceased=	Rs.7500-Rs.1875=Rs.5625/- per month

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Sr. No.	***Heads***	***Calculations***
(iv)	Compensation after multiplier of 18 is applied	Rs.5625X 12 X 14= Rs.09,45,000/-
(v)	Conventional heads (Loss of estate, funeral expenses, loss of consortium)	Rs.70,000/-
(vi)	Loss of filial consortium (child)	Rs.1,20,000/-(Rs.40,000/- to each child)
(vii)	Total Compensation to be awarded to the claimants now	Rs.11,35,000/-

DECEASED-VIKESH

Sr. No.	***Heads***	***Calculations***
(i)	Income	Rs.6000/- per month
(ii)	40% of (i) above to be added as future prospects=	Rs.6000+Rs.2400=Rs.8400/- per month
(iii)	1/4th of (ii) deducted as personal expenses of the deceased=	Rs.8400-Rs.2100=Rs.6300/- per month
(iv)	Compensation after multiplier of 18 is applied	Rs.6300X 12 X 17= Rs.12,85,000/-
(v)	Conventional heads (Loss of estate, funeral expenses, loss of consortium)	Rs.70,000/-
(vi)	Loss of filial consortium (child and parents)	Rs.1,20,000/-(Rs.40,000/- to each child)
(vii)	Total Compensation to be awarded to the claimants now	Rs.14,75,000/-

15. In view of the above, the appeal (FAO No. 7326 and 7332 of 2016) stands partly allowed and the appeal filed by claimant i.e FAO No. 1567-2017 stands dismissed and the appeal filed by claimant i.e FAO No. 7420-2016 is partly allowed. The award stands modified to the above extent.

12. Accordingly, the claimants are entitled to compensation of Rs.11,35,000/- (in FAO No.7420-2016) and Rs.14,75,000/- (in FAO No. 1567-2017). The compensation shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% from the date of filing of the claim petition, in view of judgment of Hon'ble the Apex Court in ***Civil Appeal No. 4528-2019 titled as Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and***

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ors, decided on 01.05.2019. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

16. Further it is hereby directed that the amount of Rs.25,000/- deposited by the appellant at the time of filing of appeals, vide draft No. 032645 dated 24.11.2016 in FAO No.7332-2016 and 032646 dated 25.11.2016 in FAO No. 7326-2016 in the Registry of this Court be returned to him.

17.07.2019 **(RITU BAHRI)**
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***

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