IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 13.11.2019

FAO No.8463 of 2015 (O&M)

Krishan @ Chanda @ Chandi Ram ... Appellant

Versus

Deepak and others ... Respondents

FAO No.120 of 2016 (O&M)

Krishan Kumar ... Appellant

Versus

Deepak and others ... Respondents

FAO No.121 of 2016 (O&M)

Bhagat Singh and another ... Appellants

Versus

Deepak and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Chand Ram Olla, Advocate for the appellants.

Mrs. Geeta Gulati, Advocate for the insurance company.

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.8463 of 2015, 120 and 121 of 2016 as these have emerged out of the same award dated 17.08.2015 passed by the Motor Accidents Claims Tribunal, Hisar whereby compensation has been assessed on account of injuries sustained by

Krishan @ Chanda @ Chandi Ram, Krishan Kumar son of Ranbir Singh and death of Nihali in a motor vehicular accident that took place on 17.05.2013.

The aforesaid appeals have been filed by the claimants seeking enhancement of compensation.

FAO No.8463 of 2015

The Tribunal assessed Rs.57,400/-, detailed hereunder:-

Medical expenses	Rs.38,400/-
Pain and sufferings	Rs.10,000/-
Special diet	Rs.3000/-
Attendant charges	Rs.3000/-
Transportation charges	Rs.3000/-

However, 50% negligence has been attributed to the injured/deceased and claimant was paid Rs.28,700/-

Counsel for the appellant would argue that findings of the Tribunal attributing 50% negligence to occupants of motorcycle driven by Krishan Kumar son of Ranbir Singh on which Krishan @ Chanda @ Chandi Ram and Nihali were sitting on the pillion seat are grossly erroneous and liable to be set aside. It is further argued that entire negligence for the occurrence may be attributed to driver of Endeavor car bearing registration No.HR-20-V-6665 (hereinafter referred to be 'offending vehicle').

Indisputably, motorcycle driven by Krishan Kumar son of Ranbir Singh was hit by the offending vehicle from behind. The mere fact that three persons were travelling on the motorcycle *ipso facto* is not sufficient to attribute contributory negligence to the driver or riders of the motorcycle. In this context, reference can be made to judgments of this Court Banwari Lal and another Vs. Ran Singh and others, FAO No.2191 of 2014, decided on 23.08.2016 and Karnail Singh and others vs. Balwinder Singh and another 2013(1) Vol. 169 PLR 774. In the given circumstances, findings of the Tribunal attributing contributory negligence to riders of the motorcycle cannot be allowed to sustain and are accordingly set aside. As a natural corollary, the claimants would be entitle to receive the entire compensation assessed by the Tribunal and additional compensation, if any, allowed by this Court.

The Tribunal awarded Rs.38,400/- towards medical expenses based upon documents Exs.P6 to P13 and P85 to P90 and the same is affirmed. The injured remained hospitalised from 17.05.2013 to 24.05.2013 for fracture of pelvic bone. Taking into consideration the period of hospitalisation and nature of injuries sustained coupled with the amount assessed by the Tribunal, claimant is awarded additional compensation of Rs.7600/- under the heads wherein compensation has been granted by the Tribunal. He is awarded loss of income for the period of treatment and recovery to the tune of Rs.5000/-. The additional amount of Rs.12,600/- shall be payable with interest @ 7.5% per annum from the date of petition till realization. The entire compensation assessed by the Tribunal shall be payable with interest at the rate allowed in the award.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FAO No.120 of 2016

The Tribunal assessed Rs.3,28,000/-, detailed hereunder:-

Medical expenses	Rs.3,01,200/-
Pain and sufferings	Rs.10,000/-
Special diet	Rs.6000/-
Attendant charges	Rs.6000/-
Transportation charges	Rs.5000/-

However, 50% negligence has been attributed to the injured/deceased and claimant was paid Rs.1,64,100/-,

The Tribunal awarded Rs.3,01,200/- towards medical expenses based upon documentary evidence and the same is affirmed. Dr. Tarun Sapra PW5 had deposed that injured was admitted in the hospital with head injury, multiple long bone fractures followed by chest complications. The injured remained hospitalised for about 20 days from 17.05.2013 to 06.06.2013. Taking into consideration the nature of injuries sustained coupled with the period of treatment, claimant is awarded additional amount of Rs.11,800/- under the heads namely pain and sufferings, special diet, attendant charges and transportation. The appellant shall be entitle to loss of income for the period of treatment and recovery for two months to the tune of Rs.10,000/-. The additional amount of Rs.21,800/- shall be payable with interest @ 7.5% per annum from the date of petition till realization. The entire compensation assessed by the Tribunal shall be payable with interest at the rate allowed in the award.

The appeal is partly allowed in the aforesaid terms.

FAO No.121 of 2016

The Tribunal assessed Rs.9,22,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.6000/-
Multiplier	14
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.6,72,000/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-
Cost of litigation	Rs.25,000/-

However, 50% negligence has been attributed to the injured/deceased and claimants were paid Rs.4,61,000/-,

The plea of claimants is that deceased used to look after agricultural land owned by Bhagat Singh and had been taking 10 acres of land on half share basis thereby earning Rs.50,000/- per month. The Tribunal refused to accept contention of the appellants with regard to deceased being involved in agricultural activity, in view of observations made in para 57 of the award. Counsel for the appellants has failed to advance any convincing argument with regard to deceased being involved in any commercial activity and had a source of income. In the given circumstances, value of services of the deceased would be assessed as a house-maker.

The claim has been filed by the husband and son of the deceased. A house maker has multifarious duties to perform and is available to the family round the clock. Taking a clue from notification issued by the

State of Haryana and obligations discharged by a house-maker, income of the deceased is assessed at Rs.7500/- per month. No deduction for personal expenses would be made in the light of Division Bench judgment of this Court **Paramjit Singh and another Vs. Dilbagh Singh @ Bagga and others, 2013(3) Law Herald 2730**. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.12,60,000/- (7500 x 12 x 14).

Compensation to the tune of Rs.2,25,000/- assessed under conventional heads is modified to the effect that claimants shall be entitle to Rs.55,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Funeral expenses	Rs.15,000/-

The sum of Rs.25,000/- towards cost of litigation allowed by the Tribunal is affirmed.

Total compensation is Rs.13,40,000/- and additional amount is Rs.8,79,000/- (13,40,000 - 4,61,000), payable with interest @ 7.5% per annum from the date of petition till realization, in terms of the award. The compensation awarded by the Tribunal shall be payable with interest at the rate allowed in the award.

The appeal is partly allowed in the aforesaid terms.

13.11.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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