IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No. 1519 of 2017**

Date of Decision: May 27 , 2019.

Bharti AXA General Insurance Company Ltd. ...... APPELLANT(s)

Versus

Jasvir Kaur and others ...... RESPONDENT (s)

2. **FAO No. 8401 of 2017**.

Jasvir Kaur and others ...... APPELLANT(s)

Versus

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

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sanjeev Goyal, Advocate
for the appellant/Insurance company (in FAO No.1519 of 2017) and
for respondent No.3 (in FAO No. 8401 of 2017).

Mr. R.P. Daaria, Advocate
for the appellants/claimants (in FAO No. 8401 of 2017) and
for respondents No.1 to 3 (in FAO No. 1519 of 2017).

Mr. Abhishek Chha, Advocate for
Mr. Govinder Singh Brar, Advocate
for respondents No.4 and 5 (in FAO No. 1519 of 2017) and
for respondents No.1 and 2 (in FAO No. 8401 of 2017).

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This judgment shall dispose of FAO Nos. 1519 and 8401 of 2017 as both the appeals arise out of award dated 23.08.2016 passed by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib.

Claimants i.e., the widow and children of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Sukhwinder Singh, who lost his life in a motor vehicle accident which took place on 15.11.2015 due to rash and negligent driving of the offending car vehicle bearing registration No.CH-01-BC-0549 by respondent No.1 in a rash and negligent manner. FIR No.187 dated 16.11.2015 under Sections 279/337/304A IPC was registered at Police Station Fatehgarh Sahib on the statement of CW3 Randhir Singh.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 15.11.2015 due to the rash and negligent driving of the offending car bearing registration No.CH-01-BC-0549 by respondent-Karamjit Singh. While accepting the deceased to be an agriculturist, notional income of the deceased was assessed as ₹10,000/- per month. Dependancy was calculated as ₹4,600/- per month. Learned Tribunal added another sum of ₹3,000/- per month towards employment of an person to look after the land and the agricultural operations. Ultimately, dependancy of the claimants was, thus, assessed as Rs.7,600/- per month. Multiplier of 14 was applied. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded, besides, a sum of ₹25,000/- on account of funeral expenses. Total compensation of ₹14,01,800/- was awarded by the learned Tribunal.

Aggrieved therefrom, the insurance company as well as the claimants have filed their respective appeals. Insurance company seeks reduction of the amount of compensation whereas, the claimants seek enhancement thereof.

Learned counsel for the insurance company submits that income of the deceased has been incorrectly assessed by the learned Tribunal. As the deceased was an agriculturist, it is, at best, a loss of managerial skills, which are to be taken as his income, as the land doubtlessly remains with the claimants and income thereof shall be received by them. Furthermore, excessive compensation has been awarded under the conventional heads, which is contrary to the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**. It is, thus, prayed that appeal filed by the insurance company be allowed.

Learned counsel for the claimants on the other hand submits that as per J-forms (Ex.C4 to Ex.C20), the deceased was earning much more than the amount assessed by the learned Tribunal. Apart from being an agriculturist, the deceased was a diary farmer as well as a property dealer earning a sum of Rs.1,00,000/- per month. Moreover, increment on account of future prospects has not been afforded in terms of guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra). It is, thus, prayed that the appeal filed by the claimants be allowed.

Heard learned counsel for the parties and have gone through the record.

Learned Tribunal while observing that the deceased was hale and hearty, has assessed his notional income as ₹7,000/- per month. Another sum of ₹3,000/- per month was added towards the employment of a person to look after the agricultural operations after the death of Sukhwinder Singh. In this way, income of the deceased was as ₹10,000/- per month.

Learned counsel for the claimants is unable to deny that there is no evidence on record to show that the deceased was engaged in any other vocation except agriculture. There is no evidence on record to indicate any income which the deceased may have been earning as a diary farmer or being engaged in the business of property dealing. In this view of the matter, it is a settled position that it is only the loss of managerial skills which have to be taken into account while assessing income of the deceased. At the same time, to say that income of the deceased who was admittedly an agriculturist, is to be determined with reference to the minimum wage of an unskilled labourer, is not justified. Deceased-Sukhwinder Singh was admittedly the owner of three (3) acres of land. It is noticed that the minimum wage of a highly skilled labourer in the State of Punjab at the relevant time was ₹9,644/- per month and that of a skilled labourer about ₹8,612/- per month. In case income of the deceased is assessed as ₹9,000/- per month and increment of 25% on account of future prospects is afforded with deduction of 1/4th and thereafter multiplier of 14 is applied, loss of dependancy would be almost the same as assessed by the learned Tribunal. After addition of the compensation amount under the conventional heads in terms of the judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra), there is not much of difference in the total amount of compensation awarded by the learned Tribunal as it is not in dispute that the claimant-widow is not entitled to ₹1,00,000/- towards loss of consortium as afforded by the learned Tribunal.

Keeping in view the peculiar facts and circumstances of the case, I do not find any ground, whatsoever, to interfere in any of the appeals, filed by either the Insurance company or the claimants.

Consequently, award dated 23.08.2016 passed by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib is upheld. Both the appeals are dismissed with no order as to costs.

(LISA GILL)
JUDGE

May 27 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No