IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-248-2017(O&M)

Prabha Devi and others

...Appellants

Versus

Pankush Goyal and others

...Respondents

(2) FAO-542-2017(O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Prabha Devi and others

...Respondents

Date of Decision:-7.5.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Ekta Thakur, Advocate
for the appellants in FAO-248-2017 and
for respondent Nos.1 to 6 in FAO-542-2017.

Mr.Sanjiv Pabbi, Advocate
for the appellant in FAO-542-2017 and
for respondent No.3 in FAO-248-2017.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-248-2017 filed on behalf of appellants – Prabha Devi and others and FAO-542-2017 filed on behalf of appellant – United India Insurance Company Ltd.

On account of death of Umesh son of Sh.Gopal Singh, aged about 28 years, resident of House No.140, Sector 41-D, Chandigarh said to be working as a Carpenter, earning Rs.12,000/- per month, in a motor vehicular accident, which took place on 7.12.2005 at about 5:45 p.m. in the area of turn of Sector 32, Chandigarh statedly on account of rash and negligent driving of motorcycle bearing registration No.HR59-B-9201 (hereinafter referred to as the offending vehicle), his legal heirs i.e. his wife – Smt.Prabha Devi, minor daughters Baby Sarita aged 12 years and Baby Pooja aged about 11 years, minor son – Master Suraj aged about 11 years, father – Sh.Gopal Singh aged about 60 years and mother – Smt.Phool Pati aged about 56 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Pankush Goyal – driver, Updesh Goyal – owner and United India Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.40 lacs.

After contest by all the three respondents, the claim petition was allowed vide award dated 30.7.2016 passed by Motor Accidents Claims Tribunal, Chandigarh and compensation of Rs.22,33,970/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization was awarded to the claimants No.1 to 4 and 6 payable by all the respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

The claimants No.1 to 4 and 6 being of the view that the compensation awarded to them was on lower side, whereas respondent 3

– Insurance company being altogether of different view that compensation awarded is on higher side have filed separate appeals before this Court.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the appellants/claimants has contended that though the claimants had taken up a specific plea that deceased was working as a Carpenter, earning Rs.12,000/- per month and to prove that fact they had examined Sh.Vasudev Sharma, Carpenter as PW1, who had deposed in that regard, the Tribunal wrongly treated the deceased as a Semi Skilled-II labourer assessing his income to be Rs.8,370/-.

Whereas learned counsel appearing for the insurance company submitted that the Tribunal was justified in doing so since the claimants had not brought any documentary evidence to show the avocation of the deceased as a Carpenter and to establish that he was earning Rs.12,000/- per month from that avocation.

After hearing learned counsel for the parties and going through the record, I find that the Tribunal did not commit any wrong in taking income of the deceased to be Rs.8,370/- considering the minimum wages payable to Semi-Skilled-II labourer at the relevant time. Keeping in view the age mentioned in the post-mortem report, the age of the deceased was taken to be 35 years by the Tribunal. The Tribunal has added 50% of the amount towards future prospects. However, in view of citation ***National Insurance Company Limited Versus Pranay Sethi and Ors.,***

2017(4) RCR(Civil)1009, only 40% of the amount should be added. Doing that the monthly income of the deceased comes out to be Rs.11,718/-(8370+3348).

The Tribunal observing that Sh.Gopal Singh father of the deceased was not dependent, leaves the number of dependent members of the deceased to be five. In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the number of dependent family members 4 to 6, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.8,789/- per month, annual dependency comes out to Rs.8,789 x 12 = Rs.1,05,468/-.

The Tribunal has used multiplier of 16, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,05,468 x 16 = 16,87,488/-. The Tribunal has awarded Rs.1,050/- on account of amount incurred on the treatment of deceased, which in my view also is in proper manner. Doing that the compensation payable comes out to Rs.16,88,538/-(16,87,488 + 1050).

The Tribunal has awarded a sum of Rs.1,00,000/- to applicant No.1 towards loss of consortium, Rs.1,00,000/- each to applicants No.2 to 4, minor children for loss of love, care and guidance and Rs.25,000/- as funeral expenses. However, in view of citation ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. Thus, the total compensation comes out to Rs. 16,88,538 + 70,000 = 17,58,538/-.

The Tribunal has wrongly awarded compensation of Rs.22,33,970/-. The same is reduced to Rs.17,58,538/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.17,58,538/-. Other terms and conditions regarding apportionment in the original award shall remain the same.

With such modification, FAO-542-2017 filed on behalf of Insurance Company is allowed partly with costs.

If the amount of compensation has already been paid by the Insurance company, it shall be entitled to recover the difference in amount from the claimants as per law by way of filing an execution application before the Motor Accidents Claims Tribunal, Chandigarh.

Consequently, FAO-248-2017 filed on behalf of the appellants/claimants stands dismissed with costs.

7.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No