IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 3256 of 2017(O&M)

Date of Decision: November 05 , 2019.

New India Assurance Company Ltd. ...... APPELLANT(s)

Versus

Reena Devi and others ...... RESPONDENT (s)

2. FAO No. 7575 of 2017(O&M).

Reena Devi and others ...... APPELLANT(s)

Versus

Surinder Pal and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Paul S.Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the appellant in FAO No.3256 of 2017.

Mr. Arav Gupta, Advocate (Court Guardian)
for respondents No.2 to 4 in FAO No.3256 of 2017.

Mr. Sandeep Kotla, Advocate
for the appellants in FAO No.7575 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 No.3256 of 2017 (New India Assurance Co. Ltd. v. Reena Devi and others) and FAO No.7575 of 2017 (Reena

Devi and others v. Surinder Pal and others).

Both these appeals have been filed challenging the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as, the 'Tribunal') vide impugned award dated 01.03.2017. FAO No.3256 of 2017 has been filed by the Insurance company seeking reduction of compensation whereas, the claimants have filed FAO No.7575 of 2017 seeking enhancement thereof.

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 Sushil Kumar @ Sunil Kumar. It is pleaded in the claim petition that Sushil Kumar @ Sunil Kumar succumbed to the injuries suffered by him in a motor vehicle accident which took place on 29.02.2016 due to the rash and negligent driving of the offending vehicle. FIR No.62 dated 29.02.2016 (Ex.P1) under Sections 279/304A IPC, Police Station Pundri Kaithal, was registered against the driver of the offending vehicle on the statement of PW3 Ishwar Singh. The deceased is pleaded to be working as Munim with M/s Shiv Shanker Trading Company, Nigdhu, Karnal, earning a sum of ₹15,000/- per month. Compensation was, thus, prayed for.

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 car bearing registration No.RJ-01-CC-0342 by its driver, respondent – Surinder Pal. There is no challenge to this finding of the learned Tribunal in this regard.

Learned Tribunal while assessing income of the deceased to be

₹9,560/-per month with reference to the minimum wage available to a casual labourer as per the DC Rates in District Karnal, prevalent during the period from 01.03.2016 to 28.02.2017, awarded a total sum of ₹28,89,960/- to the claimants. The deceased was accepted to be 32 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 1/4th towards personal expenses was effected. Multiplier of 16 was applied. ₹25,000/- was awarded towards transportation and funeral expenses. ₹1,00,000/- was awarded to the claimant-widow on account of loss of consortium, besides, ₹7,00,000/- towards loss of love and affection.

Learned counsel for the Insurance company vehemently argues that income of the deceased has been wrongly assessed as ₹9,560/- per month with reference to the DC Rates. It is submitted that there is no evidence on record to indicate that the deceased was working as a Munim at the time of the accident, thereby earning a sum of ₹9,560/- per month. It is submitted that minimum wage available, at the relevant time, to an unskilled labourer under the Payment of Wages Act was ₹7,600/- per month. It is further submitted that compensation under the conventional heads is excessive, as is the increment towards future prospects. It is thus prayed that the compensation awarded to the claimants be reduced.

Per contra, learned counsel for the claimants submits that cogent evidence has been by the claimants to prove that the deceased was working as a Munim with M/s Shiv Shanker Trading Company, Karnal. He was earning more than ₹12,000/- per month at the time of his death. It is vehemently argued that there is no ground, whatsoever, for reduction of the compensation which, in fact, should be enhanced. It is thus prayed that the appeal filed by the Insurance company be dismissed and that of the claimants be allowed.

I have heard learned counsel for the parties and have gone through the photocopy of the record, which has been requisitioned.

Claimants pleaded the deceased-Sushil Kumar @ Sunil Kumar to be working as a Munim with M/s Shiv Shanker Trading Company, Karnal, earning a sum of ₹15,000/-. For this purpose, they have examined PW4 Sanjeev Kumar, proprietor of the said firm, who proved his income tax returns as Ex.PW4/B and Ex.PW4/D alongwith balance sheets as Ex.PW4/A and Ex.PW4/C for the years 2015 and 2016, respectively. The audit report of the firm by Anirudh Jindal and Company, Chartered Accountants, is also attached therewith.

Learned counsel for the Insurance company is unable to deny that salary towards the deceased-Sushil Kumar is reflected as ₹1,50,000/- per annum. The amount towards the salaries given to the employees shown in the balance sheet attached with the report of the Chartered Accountants alongwith the audit report, duly tally with the Bahi account produced by PW4 Sanjeev Kumar i.e., Ex.PW4/A. Accordingly, income of the deceased is duly proved to be ₹1,50,000/- per annum i.e., ₹12,500/- per month and is so held.

However, it is a matter of record that the deceased was not a permanent employee of the firm, in question. Therefore, 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***, it is an increment at the rate of 40% instead of 50%, which has to be afforded on account of future prospects. Multiplier of 16 has been correctly applied as is the deduction of 1/4th. 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 children of the deceased are held entitled to a sum of ₹40,000/- towards loss of parental consortium. They are not entitled to ₹7,00,000/- on account of loss of love and affection. The claimant-mother of the deceased is held entitled to a sum of ₹40,000/- on account of loss of filial consortium, 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 are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	1,50,000 per month
2.	Total income after addition at the rate of 40% on account of future prospects	1,50,000 + (1,50,000 **x** 40%) = 2,10,000
3.	Deduction of 1/4th on account of personal expenses	2,10,000 – (2,10,000 **x** 1/4) = 1,57,500
4.	Total dependancy after applying a multiplier of 16	(1,57,500 **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 appellants No.2 to 4	40,000
9.	Loss of filial consortium to appellant No.5	40,000
	Grand Total	₹26,70,000/-

Claimants are, thus, entitled to a sum of ₹26,70,000/-, instead of ₹28,89,960/-. Rate of interest of 9% p.a. as afforded by the learned Tribunal is maintained. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

Both the appeals i.e., FAO No.3256 of 2017 filed by the Insurance company and FAO No.7575 of 2017 filed by the claimants, are disposed of in the terms aforesaid.

(LISA GILL)
JUDGE

November 05 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No