IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO- 494-2017 (O&M)
Date of Decision: March 08, 2019

The Oriental Insurance Company Ltd.

...... Appellants(s)

Versus

Smt. Meena and others

..... Respondent(s)

with

FAO- 4696-2017 (O&M)

Smt. Meena and others

...... Appellants(s)

Versus

General Manager, Haryana Roadways and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ram Avtar, Advocate
for the appellant in FAO 494-2017 and
for respondent no.3 in FAO-4696-2017.

Mr. Barjinder Singh, Advocate for
Mr. Ashish Gupta, Advocate
for the appellants in FAO-4696-2017 and
for respondents no.1 to 3 in FAO-494-2017

Ms. Gagandeep Kaur, AAG, Haryana,
counsel for respondent no.1 in FAO No.4696-2017 and
for respondents no.4 in FAO-494-2017.

Mr. Sanjay Panghal, Advocate
for respondent no.2 in FAO-4696-2017 and
for respondent no.5 in FAO-494-2017.

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LISA GILL, J.

This order shall dispose of FAO- 494-2017 (The Oriental Insurance Co. Ltd. Vs. Smt. Meena and others) as well as FAO-4696-2017 (Smt. Meena and others Vs. General Manager, Haryana Roadways and others) as both the above noted appeals arise out of a common award dated 06.09.2016, passed by the learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal).

Claimants in this case i.e. widow, minor child and mother of the deceased Vijay Pal preferred a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of death of Vijay Pal in a motor vehicle accident, which took place on 21.06.2015. It was pleaded that the accident took place due to the rash and negligent driving of the offending Haryana Roadways bus bearing registration No. HR-55R-7860 by its driver respondent-Narender Kumar.

Learned Tribunal while assessing the income of the deceased Vijay Pal to be Rs.5,365/- per month, awarded a sum of Rs.11,94,460/- to the claimants, the detail of which is as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income of deceased	5,365/- per month
2.	1/3rd deducted for personal expenses of deceased	5,365 -1788 = 3577/-
3.	Future income of deceased 50%	3577+1788 = 5365/-
4.	Loss of dependency after applying multiplier of 17	5365 x 12 x 17 = 10,94,460/-
5.	Loss of consortium to widow	20,000/-
6.	Funeral Expenses, transportation and last rites	25,000/-
7.	On account of love and affection to minor petitioner	50,000/-
	Total	**Rs. 11,94,460/-**

Aggrieved therefrom appellant-insurance company has filed FAO-494-2017 challenging the quantum of compensation awarded by the learned Tribunal. Liability of the insurance company has not been challenged.

FAO-4696-2017 has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Tribunal.

Learned counsel for the appellant-insurance company submits that while there is no dispute regarding the income of the deceased as assessed by the learned Tribunal to be Rs.5,365/- per month, future prospects at the rate of 50% have been wrongly afforded whereas it should have been at the rate of 40% keeping in view the judgment of Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others,** ***2017(16) SCC 680.*** Moreover, compensation under the conventional heads is excessive and the same should not be more than Rs.70,000/- in terms of judgment of Hon'ble Supreme Court in **Pranay Sethi's case (supra)** itself.

Learned counsel for the claimants is unable to deny that increment on account of future prospects has to be awarded @ 40% and not 50%. It is, however, submitted that compensation under the conventional heads be awarded to the claimants in terms of ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*** **2018(4) RCR Civil 333**.

Keeping in view the facts and circumstances as above, compensation awarded to the claimants is indeed required to be re-worked. Increment on account of future prospects has to be awarded @ 40% and not 50%. As the deceased was admittedly 30 years old at the time of the accident, multiplier of 17 was correctly applied by learned Tribunal. Deduction of 1/3rd was also correctly effected by learned Tribunal. The claimants are the widow, minor child and mother of the deceased. The claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate (instead of Rs.25,000/- awarded by the learned Tribunal for funeral expenses/last rites and transportation). In terms of the judgment of Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors*. 2018(4) RCR Civil 333,** all the three claimants are entitled to a sum of Rs.40,000/- each on account of loss of consortium (instead of Rs.20,000/- awarded to the widow and Rs.50,000/- to the minor child by the learned Tribunal).

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr. No.	***Heads of Claim***	***Amount***
1.	Income @ 5,365 – 1/3rd = 3,577/- per month	42,924/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	42,924+17,170 (42,924 **x** 40%) = 60,094/-
3.	Total dependency after applying a multiplier of 17	60,094 **x** 17 = 10,21,598/-

4.	Funeral expenses and loss of estate 15,000 x 2	30,000/-
5.	Loss of consortium to all the claimants i.e. 40,000 x 3	1,20,000/-
	Grand Total	**Rs.11,71,598/-**

It is noticed that this Court on 09.03.2017 had stayed the disbursement of the amount beyond Rs.9,00,000/-. The claimants are entitled to the remaining amount with interest at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

In view of the discussion as above, FAO-494-2017 is partly allowed and FAO-4696-2017 is dismissed.

March 08, 2019.

Sunil

(LISA GILL)
JUDGE

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