IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-5038-2017(O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Satender Nath Jha and others

...Respondents

(2) FAO-5123-2017(O&M)

Satender Nath Jha and another

...Appellants

Versus

Mohammad Munavar and others

...Respondents

Date of Decision:-25.4.2019

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

Argued by: Mr.Sanjiv Pabbi, Advocate
for the appellant in FAO-5038-2017 and
for respondent No.3 in FAO-5123-2017.

Mr.I.S. Pabla, Advocate
for the appellants in in FAO-5123-2017 and
for respondents No.1 and 2 in FAO-5038-2017.

Mr.Vinod K. Kanwal, Advocate for
Mr.Ashit Malik, Advocate for
respondents No.3 and 4 in FAO-5038-2017 and
for respondents No.1 and 2 in FAO-5123-2017.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-5038-

2017 filed on behalf of appellant – United India Insurance Company Ltd. and FAO-5123-2017 filed on behalf of appellants/claimants Satender Nath Jha and another.

Sh.Satender Nath Jha aged about 49 years – father and Ms.Pushpa Jha aged about 47 years – mother of Ms.Ishmita, who perished in a road side accident had brought a claim petition under Section 166 of Motor Vehicles Act, 1988 against the respondents i.e. Mohammad Munavar – driver, Mohammad Ashraf – owner and United India Insurance Company Ltd. - insurer of truck having registration No.HR-55-1898 (hereinafter referred to as the offending vehicle) claiming compensation to the tune of Rs.50 lacs along with interest.

As per the case of the petitioners/claimants, their daughter Ms.Ishmita was aged about 20 years; that she was a student of B.A. Hons. IIIrd year at Satyawati College, Delhi; that she was doing tuition work earning Rs.15,000/- per month; that on the fateful day i.e. on 21.9.2015, Ms.Ishmita was pillion riding motorcycle bearing registration No.DL-14SF-2448 being driven by Ravi Ranjan Chobe; that they were going from PGI, Chandigarh to Delhi; that at about 3:30 p.m. when the motorcycle in question was 3 kms. short of Pipli town, then the offending vehicle being driven by respondent No.1 – Mohammad Munavar in a rash and negligent manner and at a high speed, came from behind i.e. Ambala side and hit the motorcycle, resultantly both the riders fell on the road along with the motorcycle; that both of them received multiple grievous injuries; that Ishmita succumbed to the injuries and post mortem examination on her dead body was conducted at LNJP Hospital, Kurukshetra; that formal FIR No.460 dated 21.9.2015 for the offences under Sections 279, 337 and 304-A IPC was registered at Police Station Sadar, Thanesar.

On getting notice of the claim petition, all the three respondents appeared and contested the claim petition denying the involvement of the offending vehicle in question in the accident, as such coming up with a plea that they were not liable to pay any compensation to the claimants.

Issues on merits were framed. The parties led evidence in support of their claim.

After hearing arguments, the Tribunal vide award dated 6.3.2017 awarded compensation of Rs.11,71,000/- to the claimants along with interest @ 9% per annum from the date of filing of the petition till actual realization. The amount was apportioned among both the claimants in equal shares. All the respondents were made jointly and severally liable to pay the said amount.

The claimants felt dissatisfied with the quantum of compensation awarded and have approached this Court seeking enhancement of compensation. Whereas the insurance company has filed separate appeal praying for setting aside of the award.

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.

The Tribunal considering the evidence adduced before it by the parties had come to the inference that the deceased was pursuing degree in Bachelor of Arts in Satyawati College, Delhi University; that she was not doing any professional course and was an average student, therefore, her notional income was fixed @ Rs.8,000/- per month. I do not find anything wrong with Tribunal doing so.

The Tribunal has made addition of 50% towards future prospects. However, I find that in view of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** addition of 40% should have been made. Doing that the monthly income of the deceased is taken as Rs.11,200/-(8,000 + 3,200).

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** deduction towards self-expenses is to be taken as 50%. Doing that the dependency of claimants comes out to Rs.5,600/- per month, annual dependency comes out to Rs.5,600 x 12 = Rs.67,200/-.

The Tribunal has wrongly applied multiplier of 13 considering the ages of claimants, when in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra) the age of deceased is to be considered for the purpose of adopting the multiplier and not that of the claimants/dependents. As per the case of the claimants, the age of the deceased at the time of accident was 20 years. In the post-mortem report of the deceased, her age is mentioned to be 21 years. As per the admit card issued by University of Delhi to the deceased, her date of birth is mentioned to be 13.8.96, that means on the date of accident, she was aged less than 20 years. In view of the judgment

<u>Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.</u>(supra) when the deceased was in the age group of 15 to 25 years, then multiplier of 18 should be applied. Doing that the compensation payable comes out to Rs.67,200 x 18 = 12,09,600/-.

In view of the ratio of authority ***<u>National Insurance Company Limited Versus Pranay Sethi and Ors.</u>***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses. The complainant are not entitled to get any compensation for loss of love and affection. The total compensation comes out to Rs. 12,09,600 + 30,000 = 12,39,600/-.

The Tribunal has awarded compensation of Rs.11,71,000/-.

In this way, the enhanced amount comes out to Rs.68,600/- (12,39,600 - 11,71,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.68,600/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, **FAO-5123-2017** filed by appellants/claimants Satender Nath Jha and another is allowed partly with costs. Consequently, **FAO-5038-2018** filed on behalf of the United India Insurance Company Ltd. stands dismissed.

25.4.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No