[238] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 08.03.2019

1. FAO No.5139 of 2017 (O&M)

United India Insurance Co. Ltd. …. Appellant

Versus

Sukhwinder Kaur and others. ….. Respondents

2. FAO No.7089 of 2017

Smt. Sukhwinder Kaur @ Sukhwinder and others. …. Appellant

Versus

Vijay Kumar and others. ….. Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Pardeep Goyal, Advocate for the appellant in FAO No.5139 of 2017 and respondent No.3 in FAO No.7089 of 2017.

Mr. Inderjeet Sharma, Advocate for the appellants in FAO No.7089 of 2017 and respondent Nos.1 to 3 in FAO No.5139 of 2017.

Mr. Vipul, Advocate for respondent Nos.4 and 5 in FAO No.5139 of 2017 and respondent Nos.1 and 2 in FAO No.7089 of 2017.

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B.S. Walia, J. (Oral).,

[1] FAO No.5139 of 2017 has been filed by the Insurance Company seeking reduction of compensation of ₹ 11,33,000/- awarded to the respondents/claimants, while FAO No.7089 of 2017 has been filed by

the appellants/claimants seeking enhancement of the compensation awarded to them.

[2] The learned Motor Accidents Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as 'the Tribunal') took into account the age of the deceased Jai Pal as 42 years, occupation as agriculturist, assessed his income as ₹ 6,000/- per month, took into account 50% of the established income of the deceased for the purpose of working out future prospects payable, made deduction 1/3rd of the income of the deceased towards his personal expenses, applied multiplier of 14, further by awarding ₹ 1,00,000/- on account of loss of consortium and ₹ 25,000/- on account of funeral expenses, awarded total compensation of ₹ 11,33,000/- to the widow and two children of the deceased.

[3] Learned counsel for the appellant/Insurance Company contends that since, the deceased was self-employed and was between the age of 40 to 50 years, therefore, 25% of the established income of the deceased is liable to be taken into account towards future prospects as against 50% taken into account by the learned Tribunal. Secondly, ₹ 40,000/- is payable to the widow of the deceased on account of loss of consortium as against ₹ 1,00,000/- awarded by the learned Tribunal. Besides, ₹ 25,000/- awarded on account of funeral expenses is liable to be scaled down to ₹ 15,000/-.

[4] Per contra, learned counsel for the appellants/claimants in FAO No.7089 of 2017 contends that income of the deceased has been taken on the lower side since as per the notification issued by the Government of Haryana for the relevant period under the Minimum Wages Act, monthly wages of ₹ 8070/- per month were payable to an unskilled labourer engaged for the purpose of agriculture work. Photocopy of the notification for the relevant period reflecting income of an unskilled agricultural labourer as ₹ 8070/- per

month duly signed by the learned counsel for the appellants/claimants is taken on record as Mark 'A' and copy thereof handed over to learned counsel for the Insurance Company who on perusal thereof does not dispute wages payable to an unskilled labourer as ₹ 8070/- per month. Accordingly, the income of the deceased is treated at ₹ 8070/- per month as against ₹ 6000/- taken into account by the learned Tribunal for assessing the compensation payable.

[5] As per the award of the learned Tribunal, the deceased was 42 years of age and was self-employed at the time of his death. As per paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others, 2017 (4) RCR (Civil) 1009,** 25% of the established income of the deceased minus the tax component is to be taken into account in view of the deceased being self-employed and between the age group of 40 to 50 years. In the circumstances, as against 50% awarded by the learned Tribunal, 25% of the established income minus tax component shall be taken into account towards future prospects while computing the compensation.

[6] Likewise, as per paragraph No.61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra), compensation of ₹ 1,00,000/- awarded on account of loss of consortium is scaled down to ₹ 40,000/- and ₹ 25,000/- awarded on account of funeral expenses is also scaled down to ₹ 15,000/- while ₹ 15,000/- is awarded on account of loss of estate.

[7] In the light of the position as noted above, the appellants/claimants in FAO No.7089 of 2017 are held entitled to the following compensation:-

Sr. No.	**Heads**	**Amount assessed by the Tribunal**	**Amount assessed by the Court**
1.	Income	₹ 6000/-	₹ 8070/-
2.	Future Prospects	50% of ₹ 6000/- = ₹ 3000/-	25% of ₹ 8070/- ₹ 2017.5/- (rounded off to ₹ 2018/-)
3.	Total Income Assessed	₹ 6000/- + ₹ 3000/= ₹ 9000/-	₹ 8070/- + ₹ 2018/- = ₹ 10,088/-
4.	Multiplier applied	14	14
5.	Deduction (towards personal expenses of deceased)	1/3rd of ₹ 9000/- = ₹ 3000/-	1/3rd of ₹ 10,088/- = ₹ 3362.6/- (rounded off to ₹ 3363/-)
6.	Dependency (Annual)	(₹ 9000/- - ₹ 3000/-) = ₹ 6000/- (per month) and ₹ 6000/- x 12 = ₹ 72,000/- (annually)	(₹ 10,088/- - ₹ 3363/-) = ₹ 6725/- (per month) and (₹ 6725/- x 12) = ₹ 80,700/- (annually)
7.	Compensation awarded by applying multiplier	₹ 72,000/- x 14 = ₹ 10,08,000/-	₹ 80,700/- x 14 = ₹ 11,29,800/-
8.	Loss of consortium	₹ 1,00,000/-	₹ 40,000/-
9.	Funeral Expenses	₹ 25,000/-	₹ 15,000/-
10.	Loss of Estate	NIL	₹ 15,000/-
11.	Rate of interest	6 % per annum	9% per annum
	Total	₹ 11,33,000/-	₹ 11,99,800/-

[9] Accordingly, as against compensation of ₹ 11,33,000/- awarded by the learned Tribunal, the appellants/claimants in FAO No.7089 of 2017 are held entitled to compensation of ₹ 11,99,800/- along with interest @ 9% per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier.

[10] In the light of the position as noted above, although the future prospects are to be calculated @ 25% of the established income of the deceased, yet in the net result, the compensation payable stands enhanced.

[11] Accordingly, FAO No.5139 of 2017 filed by the Insurance Company is disposed of while FAO No.7089 of 2017 is allowed by modifying award dated 01.05.2017 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

08.03.2019
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.