IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 4781 of 2011 (O&M)
Date of Decision : 14.03.2019

Bajaj Allianz General Insurance Co. Ltd. .....Appellant

Versus

Madhvi @ Mamta and others .....Respondents

2. FAO No. 43 of 2012 (O&M)

Madhvi @ Mamta and others ....Appellants

Versus

Ramandeep Singh @ Raman and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Subhash Goyal, Advocate
for the appellant in FAO-4781-2011 and
for respondent no. 3 in FAO-43-2012.

Mr. K.S. Rekhi, Advocate
for appellants in FAO-43-2012 and
for respondents no. 1 to 5 in FAO-4781-2011.

Surinder Gupta, J.

Motor Accident Claims Tribunal, Amritsar (later referred to as 'the Tribunal') vide award dated 19.01.2011, awarded compensation of ₹11,59,000/- for death of Vivek Sharma (later referred to as 'the deceased'), husband of appellant no. 1, father of appellants no. 2 to 4 and son of appellant no. 5 (in FAO-43-2012), in a motor vehicle accident with truck bearing registration no. DLI-LE-6168 (later referred to as 'the offending vehicle'). Bajaj Allianz General Insurance Company Ltd., insurer of the offending vehicle and claimants have filed two separate appeals bearing FAO No. 4781 of 2011 and FAO No. 43 of 2012, respectively, against the award.

2. As the only issue raised by appellants in both the appeals relates

to quantum of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. The compensation awarded by the Tribunal was computed as follows:-

(i)	Name of the deceased	Vivek Sharma
(ii)	Age of the deceased	32 years
(iii)	Date of accident	01.07.2008
(iv)	Marital status	Married
(v)	Number of dependants	Four
(vi)	Income of the deceased	₹7500 per month
(vii)	1/3rd of (vi) above deducted towards personal expenses	(₹7500- ₹2500) = ₹5000 per month
(viii)	Compensation calculated after applying the multiplier of 16	(₹5000X12X16) = ₹960000
(ix)	Compensation towards funeral expenses.	₹10000
(x)	Compensation for loss of consortium and loss of love and affection	₹25000
(xi)	Medical expenses	₹164000
Total		**₹1159000**

4. Learned counsel for Insurance Company, insurer of the offending vehicle, has argued that the accident took place in the year 2008. In the absence of any evidence on record with regard to income of the deceased, the Tribunal has assessed the same as ₹7500/- per month, which is on higher side. Even the wages of a skilled worker in the year 2008 were around ₹3000/- per month and the Tribunal has not given any reason as to why income of the deceased has been taken as ₹7500/- per month.

5. Learned counsel for claimants has argued that the deceased was owner of mini bus, tractor-trolley and agricultural land. The Tribunal has looked into all these aspects while assessing his income. On taking note of the fact that he was a man of means, income of the deceased assessed as ₹7500/- per month is on lower side. Referring to law settled by Apex Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others,***

2017 (4) RCR (Civil) 1009, he has argued that claimants are entitled to 40% addition in income of the deceased towards loss of future prospects. The deduction towards personal expenses of the deceased is to be made as $1/4^{th}$ while the Tribunal has taken it as $1/3^{rd}$. Claimants are also entitled to compensation of ₹70,000/- under the conventional heads.

6. The question, which arises for consideration is regarding the assessment of monthly income of the deceased, which the Tribunal has taken as ₹7500/- per month. While assessing income of the deceased, the Tribunal has observed in para 14 of the award as follows:-

> *"14. So, from the above discussion, it stands fully proved on record that Vivek Sharma was 32 years old at the time of his death in this accident as his date of birth was 25.8.1977 as per his matriculation certificate, Ex. P1. Deceased Vivek Sharma was self employed. He owned his own tractor bearing no. PB-18-J-6120, RC of which is Ex. P15. He was owner of landed property i.e. land measuring 7 kanals 19 marlas, which he had purchased from Satya Devi vide sale deed dated 23.4.2008, copy of which is Ex. P18. He had also purchased land measuring 9 kanals 13 marlas from Ram Singh son of Nasib Singh, resident of Jharoli, district Gurdaspur, vide sale deed dated 13.6.2008, copy of which is Ex.P19. No doubt, the claimants have alleged that Vivek Sharma purchased mini bus from one Amit Saini, but the RC produced by the claimants is still in the name of Amit Saini. However, it is clear that deceased-Vivek Sharma was agriculturist as he was also owner of tractor-trolley. He has also landed property as per sale deeds, Ex. P18 and Ex. P19. So, his income from all sources is*

assessed as ₹7500/- per month i.e. ₹90,000/- per annum (7500x12=90,000)...........”

7. It is apparent that the Tribunal while assessing income of the deceased has taken note of the fact that he was matriculate and self employed. He owned a tractor and had purchased land measuring 7 *kanals* 19 *marlas* vide sale deed dated 23.04.2008 and land measuring 9 *kanals* 13 *marlas* vide sale deed dated 13.06.2008. It was also alleged by the claimants that the deceased owned a mini bus but they could not prove this. The evidence on record, however, show that the deceased was a man of means and keeping in view the evidence on record, assessment of his income as ₹7500/- per month is not on higher side. As per law settled by Apex Court in case of ***Pranay Sethi (supra)***, claimants are entitled to 40% addition in income of the deceased towards loss of future prospects. The deceased has left behind five dependants and as per law settled in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, 1/4th of his income is to be deducted towards his personal expenses. Keeping in view the year of accident and prevailing money value at that point of time, claimants are also allowed lump sum compensation of ₹50,000/- under the conventional heads besides medical expenses of ₹1,64,000/- as awarded by the Tribunal.

8. In view of above, compensation to which claimants are entitled, is reassessed as follows:-

(i)	Name of the deceased	Vivek Sharma
(ii)	Age of the deceased	32 years
(iii)	Monthly income of the deceased as assessed by the Tribunal	₹7500
(iv)	40% of (iii) above added towards future prospects	(₹7500+ ₹3000)= ₹10500 per month

(v)	1/4th of (iv) above deducted towards personal expenses	(₹10500- ₹2625) = ₹7875 per month
(vi)	Compensation calculated after applying the multiplier of 16	(₹7875X12X16) = ₹1512000
(vii)	Lump sum compensation under the conventional heads	₹50000
(viii)	Medical expenses as awarded by the Tribunal	₹164000
	Total	**₹1726000**

9. As a sequel of my discussion above, the appeal **(FAO No. 4781 of 2011)** filed by **Bajaj Allianz General Insurance Co. Ltd.**, insurer of the offending vehicle is dismissed, while the appeal **(FAO No. 43 of 2012)** filed by claimants is allowed. Award of the Tribunal is modified and the compensation allowed to claimants for death of **Vivek Sharma** is enhanced from **₹11,59,000/-** to **₹17,26,000/-**. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of instant appeal till actual realization. **Bajaj Allianz General Insurance Co. Ltd** (appellant in FAO-4781-2011) being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. Claimants will share the enhanced amount of compensation as follows:-

Claimant-appellant no. 1 (wife)	40%
Claimants-appellants no. 2 to 4 (children)	15% each
Claimant-appellant no. 5 (mother)	15%

10. The share of claimants no.2 to 4, who are minor, will be deposited in some nationalized bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding age of minor as required at the time of deposit of the amount and they shall not be asked to bring fresh order from the Tribunal to

get the payment of the amount deposited in their names after the date of their attaining majority. The above direction has been issued to save claimants from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after attaining the age of majority. Claimant-Madhvi @ Mamta, being mother and natural guardian of minor claimants shall be entitled to get interest on the share of minor deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of their up bringing.

11. In the event of demise of any of the claimants before or after disposal of this appeal, compensation of his/her share shall be paid to surviving claimant.

March 14, 2019 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*