IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 5356 of 2017(O&M)

Date of Decision: May 14 , 2019.

IFFCO Tokio General Insurance Company Ltd. ...... APPELLANT(s)

Versus

Kamla and others ...... RESPONDENT (s)

2. FAO No. 6547 of 2017

Kamla and others ...... APPELLANT(s)

Versus

Devender Kumar and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ajay Singla, Advocate
for the appellant in FAO No.5356 of 2017.

Mr. B.K.Bagri, Advocate
for respondents No.1 to 5 in FAO No.5356 of 2017 and
for the appellants in FAO No.6547 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.5356 of 2017 (IFFCO Tokio General Insurance Company Ltd. v. Kamla and others) and FAO No.6547 of 2017 (Kamla and others v. Devender Kumar and others) arising out of award dated 18.04.2017 passed by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as, the 'Tribunal').

FAO No.6547 of 2017 has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Tribunal vide impugned award dated 18.04.2017, whereas FAO No.5356 of 2017 has been filed by the Insurance company challenging the quantum of compensation awarded to the claimants by the learned Tribunal.

Brief facts necessary for adjudication of this case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of Arjun Singh, who lost his life in a motor vehicle accident which took place on 28.11.2015. FIR No.248 dated 22.09.2015 under Sections 279/304A IPC (Ex.PW1/C) was registered at Police Station Kasola in respect to the incident at the instance of PW2 Suresh Kumar.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of Mahindra Pick-up vehicle bearing registration No. HR-66A-6376 by its driver respondent-Devender Kumar. This finding of the learned Tribunal has attained finality as it is not under challenge even in the appeal filed by the Insurance company.

Deceased-Arjun Singh was held to be 38 years old at the time of his death. Income of the deceased was assessed as ₹8,000/- per month. Addition in income at the rate of 50% was afforded towards future prospects. Deduction to the extent of 1/4th on account of personal expenses was effected. Multiplier of 15 was applied. ₹1,00,000/- each was awarded to the widow of the deceased on account of loss of consortium and to the minor children for loss of love & affection and guidance. ₹25,000/- was awarded on account of funeral expenses. A total sum of ₹18,45,000/- was awarded to the claimants by the learned Tribunal.

Learned counsel for the Insurance company argues that the learned Tribunal has erred in affording increment at the rate of 50% on account of future prospects. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others,** ***2017(16) SCC 680***. Further, excessive compensation has been awarded under the conventional heads. It is thus prayed that compensation awarded to the claimants be reduced accordingly.

Learned counsel for the claimants argues that income of the deceased has been wrongly assessed as ₹8,000/- per month, whereas it is proved on record that deceased-Arjun Singh was the proprietor of M/s Vishkarma Body Maker. He was engaged in making of the bodies of trucks. PW1 Kamla specifically deposed in this regard. Moreover Ex.P5, which is the bank account statement of M/s Vishkarma Body Maker, wherein Arjun Singh is reflected to be the proprietor of the firm. Furthermore, various invoices were produced on record reflecting income of the deceased. Therefore, it is prayed that compensation awarded by the learned Tribunal be enhanced and appeal filed by the Insurance company be dismissed.

I have heard learned counsel for the parties and have gone through the file as well as record produced by learned counsel for the claimants, in Court today.

There is no dispute regarding death of Arjun Singh in a motor vehicle accident which took place on 28.11.2015 due to the rash and negligent driving of the offending vehicle bearing registration No.HR-66A-6376 by respondent-Devender Kumar. Neither is there a dispute regarding liability of the Insurance company.

It is claimed that deceased-Arjun Singh was engaged in making the bodies of the trucks and was the sole proprietor of M/s Vishkarma Body Maker. He is claimed to be earning ₹35,000/- per month at the time of his death. However, perusal of the file and the records, produced in Court today, reveals that there is no evidence on record to show the exact income earned by the deceased, though it can be culled out from the record that the deceased was proprietor of M/s Vishkarma Body Maker. In this regard, reference can be made to the bank account statement, Ex.P5, which reflects deceased-Arjun Singh to be the proprietor of M/s Vishkarma Body Maker. It is not possible to arrive at an assessment of the exact income of the deceased from Ex.P5. Therefore, it is considered just and expedient to assess income of the deceased to be ₹9,238/- per month i.e., the minimum wage for a skilled labourer in the State of Haryana at the relevant time.

Deceased-Arjun Singh was admittedly 38 years old at the time of the accident. Addition in income at the rate of 40%, instead of 50% on account of future prospects, is to be afforded in terms of the judgment of the Hon'ble Supreme Court in Pranay Sethi's case (supra). Multiplier of 15 has been correctly applied. Deduction to the extent of $1/4^{th}$ has been rightly effected as well.

Instead of ₹25,000/- on account of funeral expenses, ₹15,000/- each is awarded to the claimants on account of funeral expenses and loss of estate. Instead of ₹1,00,000/- awarded to the claimant-widow on account of loss of consortium, she is held entitled to ₹40,000/-. Minor children of the deceased are held entitled to ₹40,000/- on account of loss of parental consortium and aged father too is entitled to ₹40,000/- for loss of filial consortium. Reference in this regard can gainfully be made to **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.**, ***2018(4) RCR(Civil) 333*** 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	9,238/- per month i.e. 1,10,856 per annum
2.	Total income after addition at the rate of 40% on account of future prospects	1,10,856 + (1,10,856 **x** 40%) = 1,55,198
3.	Net income after 1/4th deduction on account of personal expenses	1,55,198 – (1,55,198 **x** 1/4) = 1,16,398
4.	Total dependancy after applying a multiplier of 15	(1,16,398 **x** 15) = 17,45,970
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium to claimant-widow	40,000
8.	Loss of parental consortium to the claimants-minor children	40,000
9.	Loss of filial consortium to the claimant-father	40,000
	Grand Total	₹18,95,970/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount 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.

With the modification in the amount of compensation, both the appeals are disposed of.

(LISA GILL)
JUDGE

May 14 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No