IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No. 622 of 2017**

Date of Decision: May 15 , 2019.

National Insurance Company Ltd. ...... APPELLANT(s)

Versus

Jaswinder Singh and others ...... RESPONDENT (s)

2. **FAO No. 3474 of 2017**

Palak and others ...... APPELLANT(s)

Versus

Jaswinder Singh and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Punit Jain, Advocate
for the appellant in FAO No.622 of 2017.

Mr. G.S.Sandhu, Advocate
for respondents No.1 and 2 in FAO No.622 of 2017.

Mr. Darshan Gulati, Advocate
for respondents No.3 to 5 in FAO No.622 of 2017 and
for the appellants in FAO No.3474 of 2017.

None for respondent No.6 in FAO No.622 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.622 of 2017 (National Insurance Company Ltd. v. Jaswinder Singh and others) and FAO No.3474 of

2017 (Palak and others v. Jaswinder Singh and others) arising out of award dated 02.09.2016 passed by the Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as, the 'Tribunal').

FAO No.622 of 2017 has been filed by the Insurance company challenging the abovesaid award to the extent of quantum of compensation awarded to the claimants/respondents No.3 to 5 as well as proforma respondent No.6, whereas FAO No. 3474 of 2017 has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Tribunal.

Brief facts necessary for adjudication of this case are that, a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') was filed by the claimants i.e., the minor children and mother of deceased-Ranbir Singh seeking compensation on account of death of Ranbir Singh. Wife of the deceased was arrayed as a proforma respondent as it is claimed that she had left the deceased prior to the accident in question and had remarried. It is pleaded that Ranbir Singh lost his life in a motor vehicle accident which took place on 05.02.2015 due to the rash and negligent act on the part of the driver of the offending truck bearing registration No.HP-64-5833. FIR No.22 dated 05.02.2015 under Sections 279/304A/427 IPC (Ex.P3) was registered at Police Station Pinjore against the respondent-driver.

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 the offending truck bearing registration No.HP-64-5833 by its driver respondent-Jaswinder Singh. This finding of the learned Tribunal has attained finality.

Deceased-Ranbir Singh was held to be 39 years old at the time of his death. Income of the deceased was assessed as ₹8,470/- per month on the basis of rates of wages fixed by the Deputy Commissioner, Panchkula. Addition in income at the rate of 30% was afforded towards future prospects. Deduction to the extent of 1/4th on account of personal expenses was effected. Multiplier of 15 was applied. A consolidated sum of ₹50,000/- was awarded to the claimants towards conventional heads. A total sum of ₹15,36,620/- was awarded by the learned Tribunal to the claimants as well as proforma respondent No.6.

Learned counsel for the appellant-Insurance company argues that income of the deceased has been wrongly assessed as ₹8,470/- per month by the learned Tribunal, while assuming him to be an unskilled labourer, on the basis of the rates prescribed by the Deputy Commissioner, Panchkula vide memo dated 05.06.2014. It is contended that minimum wage of an unskilled labourer under the Minimum Wages Act, in the State of Haryana at the relevant time was ₹5,812/- per month and of a semi-skilled labourer, it was ₹5,942/- per month. Moreover, deduction of 1/4th has been wrongly effected by the learned Tribunal as it is borne out from the record that the wife of the deceased was not residing with the deceased at the time of the accident, in question. She was proceeded against ex-parte before the learned Tribunal. Furthermore, she has not even come forward to collect her share of the compensation as awarded by the learned Tribunal and deposited by the Insurance company. It is thus prayed that appeal filed by the insurance company be allowed and the compensation awarded to the claimants be reduced.

Learned counsel for the claimants however submits that just and reasonable compensation has been awarded, which calls for no reduction. Learned counsel however affirms that wife of the deceased was not living with him at the time of the accident. As per office report, respondent No.6 has refused to accept notice in this appeal as well. She was served through affixation.

I have heard learned counsel for the parties and have gone through the file.

There is no dispute regarding death of Ranbir Singh in a motor vehicle accident which took place on 05.02.2015 due to the rash and negligent driving of the offending vehicle bearing registration No.HP-64-5833 by respondent-Jaswinder Singh. Neither is there a dispute regarding liability of the Insurance company.

Learned Tribunal has assessed income of the deceased as ₹8,470/- per month as per the rates of wages fixed by the Deputy Commissioner, Panchkula. A perusal of the file reveals that deceased-Ranbir Singh is claimed to be working as a Clerk (Munshi) with M/s Gurunanak Goods Carrier, Majri Chowk, Panchkula, earning a sum of ₹15,000/- per month. However, there is no specific evidence on record to prove that the deceased was indeed working as a Munshi with the said firm, earning the salary as claimed. He was rightly treated to be an unskilled labourer. In the given facts and circumstances of the case, I do not find any ground to assess income of the deceased on the basis of rates of wages fixed by the Deputy Commissioner. Reference in this regard can be made to decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (<u>Shri Ram General Insurance Company Ltd. v. Beant Kaur and others</u>). However, keeping in view the facts and circumstances, I deem it appropriate to assess income of the deceased to be ₹6,500/- per month.

In terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***, addition in income on account of future prospects has to be given at the rate of 40% instead of 30%, as the deceased was admittedly 39 years old at the time of the accident. There is merit in the argument raised by learned counsel for respondent-Insurance company that deduction of 1/3rd should be effected as the dependants are two minor children and mother of the deceased. It is borne out from the record that wife of the deceased i.e., respondent No.6 in FAO No.622 of 2017 and respondent No.4 before the learned Tribunal, was proceeded against ex-parte before the learned Tribunal. Amount of compensation has not been collected by her till date. This fact itself points to the element of truthfulness of the stand taken by the claimants. Therefore, deduction of 1/3rd instead of 1/4th, has to be effected. Multiplier of 15 has been correctly applied. ₹15,000/- each is awarded to the claimants on account of funeral expenses and loss of estate. Instead of a consolidated sum of ₹50,000/- towards conventional heads, minor children are held entitled to ₹40,000/- on account of loss of parental consortium and mother of the deceased 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 of ₹12,02,000/- instead of ₹15,36,620/-, which is detailed as under:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Income	6,500/- per month i.e. 78,000 per annum
2.	Total income after addition at the rate of 40% on account of future prospects	78,000 + (78,000 **x** 40%) = 1,09,200
3.	Net income after 1/3rd deduction on account of personal expenses	1,09,200 – (1,09,200 **x** 1/3) = 72,800
4.	Total dependancy after applying a multiplier of 15	(72,800 **x** 15) = 10,92,000
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of parental consortium to the claimants-minor children	40,000
8.	Loss of filial consortium to the claimant-mother	40,000
	Grand Total	₹12,02,000/-

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 entire 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. However, it is clarified that in case respondent No.6 does not come forward to claim her share of the compensation within three months of the date of receipt of certified copy of this order, the same be released to the children of the deceased. The said amount shall be apportioned in equal share amongst both the daughters of the deceased, i.e., appellants No.1 and 2.

FAO No.622 of 2017 is partly allowed. FAO No.3474 of 2017 preferred by the claimants is dismissed.

A copy of this judgment be conveyed to respondent No.6 – Smt.

Kavita at the address given in the memo of parties.

(LISA GILL)
JUDGE

May 15 , 2019.
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No