IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO- 7710-2016
Date of Decision: May 23, 2019

Santosh

...... Appellants(s)

Versus

Naresh Kumar and others

..... Respondent(s)

with

FAO- 7996-2016

Suman and others

...... Appellants(s)

Versus

Naresh Kumar and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Kulwant Singh Dhanora, Advocate
for the appellants.

Service upon respondents no.1 & 2 dispensed with
vide order dated 26.07.2018.

Mr. Vinod Gupta, Advocate
for respondent no.3 – insurance company.

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LISA GILL, J.(oral)

This judgment shall dispose of FAO-7710-2016 (Santosh Vs. Naresh Kumar and others) as well as FAO-7996-2016 (Suman and others Vs. Naresh Kumar and others) as both the above noted appeals arise out of award dated 21.01.2016, passed by the learned Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal).

Brief facts necessary for the adjudication of the cases are that on 30.03.2015 Gulshan Kumar (since deceased) was going to market on his motorcycle bearing registration No. 99-TQ-4961. He was driving the motorcycle at a normal speed and on the correct side of the road, while observing traffic rules. Vijay Kumar (another deceased) was pillion riding. At about 3:00 P.M., when they reached in front of Grain Market, Kaithal, a motorcycle bearing registration No. HR-08D-8505, driven by respondent no.1-Naresh Kumar in a rash and negligent manner and at a very high speed, came from Jakholi, Bus-stand side and while coming on the wrong side of the road, it struck against the motorcycle driven by Gulshan Kumar. As a result of the accident, Gulshan Kumar and Vijay Kumar fell down and received multiple grievous injuries. Both the injured were shifted to Civil Hospital, Kaithal, where the doctors declared Vijay Kumar as dead. Gulshan Kumar was referred to PGI, Chandigarh, but he also succumbed to his injuries at LNJP Hospital, Kurukshetra, when he was being shifted to PGI, Chandigarh. It is pleaded that the accident took place due to the rash and negligent driving of the offending vehicle by respondent no.1-Naresh Kumar. FIR No.104 dated 30.03.2015 under Sections 279/304-A IPC was registered at Police Station City Kaithal against respondent no.1-Naresh Kumar.

Two claim petitions i.e. subject matter of the present appeals, were filed under Section 166 of the Motor Vehicles Act, 1988 before the learned Tribunal, one by Santosh seeking compensation on account of death of her son Vijay Kumar, 18 years of age at the time of above said accident and another by the widow, minor child and parents of deceased Gulshan Kumar, aged 24 years, seeking compensation on account of his death.

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

FAO-7996-2016

This appeal has been filed by the claimants i.e. the widow, minor child and the parents of deceased Gulshan Kumar, seeking enhancement of the compensation awarded by the learned Tribunal on account of death of Gulshan Kumar.

Learned Tribunal concluded that the accident took place due to the rash and negligent driving of the offending motorcycle bearing registration No. HR-08D-8505, by its driver respondent no.1 – Naresh Kumar. Learned Tribunal has assessed income of the deceased, aged 24 years to be Rs.9,560/- per month while treating the deceased to be a casual labourer with reference to the rates fixed by the Deputy Commissioner of the area and awarded a sum of Rs. 17,68,720/-, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	9,560/- per month
2.	Income after deducting 1/4th as personal living expenses of the deceased	9,560 - 1/4 = 7,170/-
3.	Loss of dependency after applying multiplier of 18	7,170 x 12 x 18 = 15,48,720/-
4.	Loss of love and affection	1,00,000/-
5.	Loss of consortium to widow	1,00,000/-
6.	Last Rites	20,000/-
	Total	**17,68,720/-**

Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants submits that increment on account of future prospects should be awarded.

Per contra, learned counsel for the insurance company has opposed any enhancement of the compensation while submitting that learned Tribunal has already awarded excessive compensation in this case. Income of the deceased has been assessed with reference to the minimum wages fixed by the Deputy Commissioner of the area rather than with reference to the minimum wages under the Minimum Wages Act as prevailed in the State on the date of the accident. It is submitted that there is no evidence on record to indicate that the deceased was a Painter as claimed or that he was earning a sum of Rs.25,000/- per month. In fact learned Tribunal has taken the deceased to be a casual labourer. Minimum wage of an un-skilled labourer in the State of Haryana on the date of the accident i.e. 30.03.2015 was Rs.5,812/- per month and that of a semi-skilled labourer was Rs.5,942/- per month. It is further submitted that in case 40% increment is afforded, even on a sum of Rs.6,000/- and compensation is awarded in terms of the judgment of **National Insurance Company Limited v. Pranay Sethi and others,** ***2017(16) SCC 680***, the compensation awarded to the claimants is liable to be reduced.

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

It has been held by this Court in FAO-2011-2016, title ***Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others*** that:-

"In respect to the DC Rates, it is not in dispute that they are not of a statutory character. DC Rates necessarily vary even within the districts in one particular State. Fixation of such rates are contingent on various factors including the question of availability of a particular kind of labour, worker or a specialised employee in that area. Assessment or fixation of the DC Rates is not necessarily based upon any specific guidelines or criterion which is specifically laid down on a scientific or substantive basis. Said rates are primarily laid down to meet any contingencies while appointing any person on contract basis to work for the government departments. There are no specific or set principles or guidelines for fixation of the DC Rates as specifically provided under the Minimum Wages Act. In the case of DC Rates, it is not in dispute that they have no statutory basis or sanction. Moreover, these rates are dependent upon a number of local factors which necessarily differ from district to district.

It is further not in dispute that both the States of Punjab and Haryana notified/fixed the minimum rates of wages in respect of scheduled employments. As per notification dated 27th June, 2007 issued by the Labour Department, State of Haryana, it is stated that the minimum rates of wages being fixed/revised are linked with the Haryana State Working Class Consumer Price Index Number (base year 1972-73 = 100) with July, 2007, as the base month. The rate of neutralization will be Rs.2.31 per point on the rise or fall of the consumer price index number, adjustment in wages shall be made six monthly i.e. Ist January and Ist July, every year after taking into account the average rise or fall in the Haryana State Working Class Consumer Price Index number half yearly ending December and June respectively. Subsequently vide notification dated 14.08.2014, rate of neutralisation in the State of Haryana was Rs.5.50 per point. Similar, notifications are issued by the State of Punjab as well, wherein minimum wages for employees in various sectors are fixed. The said wages are subject to periodic revisions. Minimum wages are admittedly revised/increased periodically taking into account various relevant aspects such as the price inflation etc. Minimum wages so fixed, needless to say, are applicable throughout the State in a uniform manner in the unorganised sector. They are not subject to variation from district to district.

There is merit in the proposition that in cases where no evidence is brought on record by the claimants to prove the income of the deceased/injured, it is the minimum wages as fixed under the Minimum Wages Act which should be taken as the 'primary' guiding factor while assessing the income for the purpose of calculation of the compensation to be awarded under the Motor Vehicles Act.

At the same time, it is not possible to hold that in all situations where no documentary evidence is brought on record, it is the minimum wage as fixed under the Minimum Wages Act which alone is to be assessed as the income of the deceased/injured dehors the facts and circumstances of a particular case. Doubtlessly, minimum wage fixed under the Minimum Wages Act provides a sound criterion/guideline and benchmark to assess the income of the deceased/injured in such cases, but at the same time, the tribunal/Court cannot be confined or restricted to the same. It is open to the tribunal/Court to assess the income at a rate which may be higher than the minimum wage so notified keeping in view the evidence on record in that particular case.

It is relevant to note that even if there is no specific documentary evidence to prove the income, but oral evidence led by the claimants inspires confidence and is corroborated by some attending circumstances, it is open to the Court/tribunal to assess income at a rate higher than the minimum wage or assess the same as per DC Rates. There can be no straitjacket or strict criterion laid down in these proceedings under a statute which is admittedly a beneficial piece of legislation. The same necessarily has to vary from case to case depending upon the evidence on record. Needless to say, such assessment at the same time has to be reasonable, logical, based on the evidence on record and not whimsical and arbitrary."

In the present case, the evidence on record does not justify the assessment of the deceased's income with reference to the D.C. rates. In this view of the matter, there is merit in the argument raised by the learned counsel for the insurance company that in case income of the deceased is assessed @ Rs.6,000/- per month and increment of 40% is also taken into account, there is no scope for any enhancement of the compensation awarded by the learned Tribunal.

Accordingly, being devoid of any merit this appeal is dismissed.

FAO-7710-2016

This appeal has been filed by the claimant-Santosh i.e. the mother of deceased Vijay Kumar, seeking enhancement of the compensation awarded by the learned Tribunal on account of his death.

Learned Tribunal while assessing income of the deceased, aged 18 years to be Rs.4,000/- per month, awarded a sum of Rs. 8,40,000/-, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	4,000/- per month
2.	Loss of dependency after applying multiplier of 15	4000 x 12 x 15 = 7,20,000/-
3.	Loss of love and affection	1,00,000/-
4.	Last Rites	20,000/-
	Total	**8,40,000/-**

Present appeal has been filed seeking enhancement of the aforesaid compensation.

The deceased in this case was admittedly an 18 year old student of 10th standard, at the time of the accident. It is claimed that he was helping his father in his work and earning a sum of Rs.20,000/- per month. The appellant testified that her husband who was another claimant in the petition, died during the pendency of the claim petition on 23.08.2015 and she was thus totally left destitute. It is not disputed that the deceased was indeed a student of Class 10 at the time of the accident. Therefore, it is considered just and expedient to assess the income of the deceased to be Rs.6,000/- per month.

Keeping in view the judgment of the Hon'ble supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680,*** 40% increment has to be afforded on account of future prospects. In terms of the judgment of Hon'ble Supreme Court in ***Munna Lal Jain Vs. Vipin Kumar Sharma*****, (2015) 6 SCC 347** and **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77,** it is a multiplier of 18 instead of 15 which has to be applied in this case. Claimant is entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate instead of Rs.20,000/- awarded by the learned Tribunal on account of last rites. Furthermore, the appellant is entitled to Rs.40,000/- instead of Rs.1,00,000/- on account of filial consortium in terms of the judgment of Hon'ble Supreme Court in ***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, titled Shri Ram General Insurance Co. Ltd. Vs. Beant Kaur and others.

Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income 6000 x 12	72,000/- per annum
2.	Income after addition of 40% on account of future prospects	72,000 + 28800 = 1,00,800/-
3.	Compensation after applying multiplier of 18	1,00,800 x 18 = 18,14,400/-
4.	Loss of estate	15,000/-
5.	Funeral expenses	15,000/-
6.	Loss of filial consortium	40,000/-
	Total	**18,84,400/-**

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 at the rate of 7.5% per annum on the enhanced amount, from the date of filing of the claim petition till realization. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of with the modification in the compensation as above.

Thus, FAO No. 7996 of 2016 is dismissed and FAO No.7710 of 2016 is disposed of as above.

May 23, 2019.
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No