IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 17.02.2020
FAO No.4492 of 2014 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Sheela Rani and ors. ... Respondents

FAO No.4493 of 2014 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Amarbir Singh and ors. ... Respondents

FAO No.4494 of 2014 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Kuldeep Kaur and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate
for New India Assurance Co. Ltd.

Mr. Satyaveer Singh, Advocate/Legal Aid Counsel
for the claimants.

Mr. Parvinder Singh, Advocate
for owner of Ford Ikon car.

Mr. Rajbir Singh, Advocate
for Bharti Axa General Insurance Co. Ltd.

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4492, 4493 and 4494 of

2014 as these have emerged out of the same accident in which compensation has been assessed on account of death of Harjit Singh, Bir Devinder Singh and Mohan Singh in a motor vehicular accident that took place on 31.7.2011.

Harjit Singh, Bir Devinder Singh and Mohan Singh were stated to be coming from Jaipur side to their native village Nattian Gurditpur, District Patiala in Ford Ikon car bearing No.PB-27-B-8383, driven by Bir Devinder Singh. As per the allegations, when the aforesaid car reached near Kherki Mukkad on National Highway No.8, 10 tyres offending truck bearing No.RJ-14-2G-8452 was going ahead of the car. The driver of offending vehicle suddenly applied brakes without giving any indication resulting in accident.

FAO No.4492 of 2014

The Tribunal awarded Rs.16,29,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.6500/-
Addition in income for future prospects	50%
Multiplier	18
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.14,04,000/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Loss of care and guidance	Rs.1,00,000/-

Counsel for the appellant would inform that appeal has been filed to assail only quantum of compensation. It is further argued that compensation allowed under conventional heads may be modified. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors.,**

2017 SCC 1270. Another submission made by counsel is that addition for future prospects may be restricted to 40%.

Counsel representing the claimants, on the contrary, has supported assessment made by the Tribunal.

The Tribunal, in para 16 of the award, has adverted to assessment of income of the deceased. Claimants examined Darshan Chaudhary PW4 to prove that deceased was working with him as driver at monthly salary of Rs.6500/-. Accordingly, income of the deceased is assessed at Rs.6500/- per month and the same is affirmed. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.13,10,400/- [(6500 x 12 x 18) + (40% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.13,80,400/- and compensation assessed by the Tribunal is reduced to the extent of Rs.2,48,600/- (16,29,000 - 13,80,400). The appellant shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is disposed of in the aforesaid terms.

FAO No.4493 of 2014

With regard to death of Bir Devinder Singh, the Tribunal has assessed compensation under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act').

The sole submission made by counsel for the appellant is that as the deceased himself contributed to the happening of accident, claimants are not entitle to compensation to the extent of negligence attributable to the deceased.

The contention raised by the insurance company is not meritorious because in a claim filed under Section 163-A of the Act, the Tribunal cannot examine if the occurrence is result of default or neglect of victim or deceased. In this context, reference can be made to judgment of Hon'ble the Supreme Court **United India Insurance Company Ltd. Vs. Sunil Kumar and another, 2018(1) RCR (Civil) 680.**

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed.

FAO No.4494 of 2014

The Tribunal, in regard to death of Mohan Singh, assessed compensation to the tune of Rs.10,53,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.10,000/-
Addition in income for future prospects	15%
Multiplier	9
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.8,28,000/-

Expenses on funeral	Rs.25,000/-
Loss of estate	Rs.1,00,000/-
Loss of consortium	Rs.1,00,000/-

Counsel would inform that appeal has been filed to assail only quantum of compensation. It is argued that income of deceased assessed is on higher side. Addition for future prospects and compensation allowed under conventional heads may be modified, in the light of judgment of Hon'ble the Supreme Court **Pranay Sethi and others's case (supra)**.

The Tribunal, in para 16 of the award, has noticed that as per jamabandi for the year 2008-09, land measuring 24 kanals was owned by Mohan Singh and his mother Surjit Kaur to the extent of ½ share each. Claimants examined Sukhwinder Singh PW4 to prove that he had given his 2½ killas of land on lease to Mohan Singh @ Rs.12,000/- per acre. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time coupled with land holding of the deceased, I do not find any reason to interfere in income of deceased assessed by Tribunal. However, addition for future prospects would be 10%. Other criteria adopted by the Tribunal for computing loss of dependency is correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,92,000/- [(10,000 x 12 x 9) + (10% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium Rs.40,000/-

2. Loss of estate Rs.15,000/-
3. Funeral expenses Rs.15,000/-

Total compensation is Rs.8,62,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.1,91,000/- (10,53,000 - 8,62,000). The appellant shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is disposed of in the aforesaid terms.

17.02.2020 **(REKHA MITTAL)**
ashok **JUDGE**

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