IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 2713 of 2020(O&M)

Date of Decision: March 12 , 2021.

Oriental Insurance Company Ltd. ...... APPELLANT

Versus

Pooja and others ...... RESPONDENTS

2. FAO No. 2972 of 2020

Pooja and others ...... APPELLANTS

Versus

Raj Kumar and others ...... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashwani Talwar, Advocate and
Mr. Varun Sharma, Advocate
for the appellant in FAO No.2713 of 2020 and
for respondent No.3 in FAO No.2972 of 2020.

Mr. Gopal Sharma, Advocate
for respondents No.1 to 4 in FAO No.2713 of 2020 and
for the appellants in FAO No.2972 of 2020.

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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.2713 of 2020 (Oriental Insurance Company Ltd. v. Pooja and others) and FAO No.2972 of 2020 (Pooja and others v. Raj Kumar and others) arising out of award dated 27.02.2020 passed by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as, the 'Tribunal'). FAO No.2972 of 2020 has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Tribunal vide impugned award dated 27.02.2020, whereas FAO No.2713 of 2020 has been filed by the Insurance company challenging the quantum thereof.

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 Jai Bhagwan, who lost his life in a motor vehicle accident which took place on 09.02.2018. FIR No.31 dated 09.02.2018 under Sections 279/304A IPC (Ex.P2) was registered at Police Station Rampura, Rewari in respect to the incident at the instance of PW3 Vijay Singh.

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 bus bearing registration No. HR-47B-5868 by its driver respondent-Raj Kumar. This finding of the learned Tribunal has attained finality as it is not under challenge in the appeal filed by the Insurance company.

Deceased-Jai Bhagwan was admittedly 29 years old at the time of his death. While holding the deceased to be working as Head Mistri with M/s Rajpal Saw Mill, learned Tribunal has assessed income of the deceased as ₹19,500/- per month. Addition at the rate of 40% was afforded towards future prospects. Deduction to the extent of 1/4th on account of personal expenses was effected. Multiplier of 17 was applied. ₹40,000/- was afforded to the claimant-widow on account of loss of consortium. ₹15,000/- each was awarded on account of funeral expenses and loss of estate. A total sum of ₹42,46,900/- was awarded to the claimants by the learned Tribunal.

Learned counsel for the Insurance company vehemently argues that income of the deceased has been wrongly assessed as ₹19,500/- per month merely on the basis of the statement of PW6 Rajpal. Learned counsel submits that PW6 Rajpal claiming to be the proprietor M/s Rajpal Saw Mill, has admitted in his cross-examination that he is not an income-tax payee and that no ESI or PF was deducted from the salaries of the employees of his firm. Salary certificate of the deceased produced by PW6 Rajpal, it is submitted, cannot be relied upon for assessing income of the deceased to be ₹19,500/- per month. Learned counsel submits that even if the deceased- Jai Bhagwan is accepted to be a carpenter, minimum wage of highly skilled worker in February, 2018 was not over and above ₹10,000/- per month. Therefore, income as assessed by the learned Tribunal be accordingly reduced. Learned counsel for the insurance company further submits that deduction has been incorrectly effected as 1/4th instead of 1/3rd as the father of the deceased could not have been considered to be dependant on the deceased. It is thus prayed that compensation awarded to the claimants be reduced accordingly.

Per contra, learned counsel for the claimants submits that PW6 Rajpal was the proprietor of M/s Rajpal Saw Mill where the deceased-Jai Bhagwan was working as a Head Mistri. Learned counsel also refers to Ex.P11 issued by the Forest Department, Haryana as well as the attendance record (Ex.PW6/2 to Ex.PW6/37) furnished by PW6 Rajpal. Learned counsel for the claimants submits that income of the deceased is, in fact, assessed at a lower rate, as it is evident from the record that apart from salary of ₹19,000/- per month, the deceased was earning ₹10,000/- per month by making wooden furniture at his shop situated near Gaushala Qutunpur, Rewari. It is further submitted that father of the deceased is disabled thus completely dependant upon the deceased. He did not have any independent means of livelihood. Therefore, deduction of 1/4th has been correctly effected. Moreover, the claimants other than the widow are also entitled to loss of consortium. 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 record.

There is no dispute regarding death of Jai Bhagwan in a motor vehicle accident which took place on 09.02.2018 due to the rash and negligent driving of the offending vehicle bearing registration No.HR-47B-5868 by respondent-Raj Kumar. Neither is there a dispute regarding liability of the Insurance company or age of the deceased-Jai Bhagwan to be 29 years at the time of the accident.

Perusal of the record reveals that PW6 Rajpal, who is proprietor of M/s Rajpal Saw Mill produced salary certificate (Ex.PW6/1) of deceased - Jai Bhagwan alongwith the attendance record of the firm (Ex.PW6/2 to PW6/37) maintained by him. PW6 Rajpal has specifically deposed that Jai Bhagwan was employed as Head Mistri from March, 2015 to February 9, 2018 and he was paid a salary of ₹19,500/- per month at the time of the accident. PW6 Rajpal has specifically stated that he was in the said trade for the last 20 years and that he had surrendered his GST registration in March-April, 2019 i.e., after the accident in question. I do not find any merit in the argument raised by learned counsel for the insurance company that as PW6 Rajpal admitted that he had not deposited income tax or the statutory dues towards PF etc. qua the employees of his firm, it is doubtful that Jai Bhagwan was employed with Rajpal or that Rajpal was even running a saw mill. It is a settled position that a claimant in proceedings under the Act is required to prove his case on the touchstone of preponderance of probabilities and not beyond reasonable doubt. Learned counsel for the insurance company is unable to point out any evidence on record which casts a shadow on the stand of the claimants that deceased-Jai Bhagwan was working as a Head Mistri with PW6 Rajpal at his saw mill. Ex.P11 is admittedly a license issued in favour of Rajpal to operate the saw mill at Narnaul road, Rewari. PW5 Tikam @ Tek Chand a co-worker of the deceased stated that he was working at the said saw mill for the last 8-10 years and Jai Bhagwan was working with him since 2015 till the time of his death on 09.02.2018. It is thus proved that Jai Bhagwan was working as a Head Mistri with PW6 Rajpal on a monthly salary of ₹19,500/- per month. However, at the same time I do not find any ground for enhancing the monthly income of Jai Bhagwan as assessed by the learned Tribunal. There is no evidence on record to indicate that deceased-Jai Bhagwan was running a shop near Gaushala Qutunpur, Rewari for making new wooden furniture. Therefore, income of the deceased has been rightly assessed as ₹19,500/- per month by the learned tribunal and same is upheld.

Deceased was admittedly 29 years old at the time of the accident. Addition in income at the rate of 40% on account of future prospects has been correctly afforded 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***. Multiplier of 17 has been rightly applied as well. Insofar as the deduction to the extent of 1/4th is concerned, I am of the considered opinion that same has been correctly effected keeping in view the judgment of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil) 77***. There is nothing on record to falsify the claim that father of the deceased is disabled and was thus dependant upon the deceased-Jai Bhagwan.

In addition to the compensation awarded by the learned Tribunal, claimants (appellants No.2 to 4 in FAO No.2972 of 2020) are entitled to sum of ₹40,000/- each (total ₹1,20,000/-) as loss of parental and filial consortium, respectively, in terms of the judgments of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.**, ***2018(4) RCR(Civil) 333*** and **Satinder Kaur @ Satwinder Kaur and others v. United India Insurance Co. Ltd.** ***2020 (3) RCR (Civil) 75***.

With the said modification in the impugned award dated 27.02.2020 passed by the Motor Accident Claims Tribunal, Rewari, FAO No.2713 of 2020 is dismissed and FAO No.2972 is disposed of.

(LISA GILL)
JUDGE

March 12 , 2021.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No