

**FAO-7804-2016 (O&M)
FAO-6612-2016**

HARSHA RANI
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. FAO-7804-2016 (O&M)

**The Commandant TPT BN, ITBP PO, Airport, Chandigarh
....Appellant**

Vs.

**Raj Bala Saini and others
...Respondents**

2. FAO-6612-2016

**Raj Bala Saini and others
....Appellant**

Vs.

**Balwinder Singh and another
...Respondents**

Date of decision: - 07.04.2021

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present:- Mr. Arun Gosain, Advocate
for the appellant in FAO-7804-2016 and
for respondent No.2 in FAO-6612-2016.**

**Mr. Ashwani Arora, Advocate
for the appellants in FAO-6612-2016 and
for respondents No.1 and 2 in FAO-7804-2016.**

(Through Video Conferencing)

HARSIMRAN SINGH SETHI, J. (ORAL)

By this order, two appeals, details of which have been given

in the heading, are being decided as both the appeals arise out of the same award dated 08.07.2016, passed by the Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred as 'the Tribunal').

Appeal bearing FAO-7804-2016 has been filed challenging the above-said award on the ground that the truck, which has been stated to be involved in the accident, was not actually involved in the accident and the award passed by the Tribunal is contrary to the facts on record and hence the same is liable to be set aside. In the alternative, an argument has been raised by the learned counsel for the appellant therein that the grant of 50% of the amount under the heading of the future prospects to the claimants is contrary to the settled principle of law as the same cannot be more than 40%, the award dated 08.07.2016 passed by the Tribunal needs to be modified.

The appeal bearing FAO-6612-2016 has been filed by the appellants-claimants for the enhancement of the award on the ground that monthly income fixed @ Rs.7,000/- per month by treating the deceased as unskilled worker is on lower side whereas deceased had skilled qualifications to her credit at the time of her death.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned counsel for the appellant in FAO-7804-2016 submits that keeping in view the judgment dated 05.12.2018 (Annexure A-1), passed by the learned Judicial Magistrate 1st Class, Chandigarh in respect of FIR No.356 dated 08.09.2015, which was registered in

pursuance to the accident which allegedly took place on 07.09.2015, it cannot be said that the truck No.CH01G12155 was involved in the accident. The prayer of the appellant is for setting aside the impugned award as the same is contrary to the facts which have come before the Court while dealing with FIR No.356 dated 08.09.2015.

A bare perusal of the judgment dated 05.12.2018 (Annexure A-1) passed by the learned Judicial Magistrate 1st Class, Chandigarh in respect of FIR No.356 dated 08.09.2015, shows that the finding that the truck bearing No.CH01G12155 was not involved in the accident is nowhere recorded. It only deals with the fact whether, the driver of the truck, namely, Balwinder Singh was at fault being negligent in respect of the accident, which occurred on 07.09.2015, wherein, one Urvashi Saini unfortunately lost her life and other two girls, namely, Simranjeet Kaur and Harpreet Kaur received injuries. Further, negligence has not been proved against the driver by giving him benefit of doubt. Perusal of the judgment of the Judicial Magistrate 1st Class dated 05.12.2018 proves that there was an accident involving the truck bearing No.CH01G12155. That being so, the argument which is being raised by learned counsel for the appellant in FAO-7804-2016 is not corroborated by the judgment and hence, cannot be accepted.

Further, the standard of proof required for establishing the negligence in the criminal case has to be beyond reasonable doubt whereas, in the cases relating to the claim of compensation in respect of an accident, the proof/evidence required is to the extent of

preponderance. Hon'ble Supreme Court of India in Anita Sharma and others Vs. The New India Assurance Co. Ltd. And another, held as under :-

“22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant’s version is more likely than not true. A somewhat similar situation arose in [Dulcina Fernandes v. Joaquim Xavier Cruz](#) wherein this Court reiterated that:

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101])”

(emphasis supplied)”

Further, learned counsel for the appellant in FAO-7804-2016 has not been able to point out from the evidence on record that any finding recorded by the Tribunal qua the negligence of the driver, is not

supported by the evidence on record. Therefore, no benefit of the order passed by the Judicial Magistrate Ist Class dated 05.12.2018 in respect of FIR No. 356 dated 08.09.2015 can be granted to the appellants so as to hold that no accident occurred involving the Truck bearing No. CH01G12155 or that the driver of the truck was not negligent so as to deny the benefit of compensation to the claimants.

Learned counsel for the appellant in FAO-7804-2016 further submits that the award passed by the Tribunal dated 08.07.2016 needs to be modified as while computing the compensation, 50% of the income has been taken into account to grant the claimants compensation on account of loss of future income instead of 40% by relying upon a judgment in 'Santosh Devi Vs. National Insurance Company, 2012 STPL (Web) SC 248'. Learned counsel appearing on behalf of the appellant in FAO-7804-2016 submits that as per the settled principle of law settled by the Hon'ble Supreme Court of India in 'National Insurance Company Limited Vs. Pranay Sethi and others', 2017(4) PLR 693, the compensation on account of future prospects cannot be more than 40% of the income assessed. Further, relying upon **Pranay Sethi's case (supra)**, learned counsel submits that the funeral expenses, which have been awarded as Rs. 25,000/-, cannot be more than Rs. 15,000/- and Rs. 25,000/- awarded on account of loss to estate, cannot be more than Rs. 15,000/-.

Learned counsel appearing on behalf of the respondents-claimants very fairly concedes that the Award of the Tribunal needs to be

modified in respect of calculating the future prospects at 50% of the income assessed as the claimants are only entitled for 40% of the income assessed as future prospects so as to compute compensation. Learned counsel for the respondents-claimants also concedes that the funeral expenses as well as loss to Estate for which Rs. 25,000/- each has been given to the claimants, be modified to Rs. 15,000/- each and he has no objection in case, the Award of the Tribunal is modified to the said extent.

Learned counsel appearing on behalf of the claimants/appellants in FAO-6612-2016 contends that in the impugned award dated 08.07.2016, the income of deceased has been assessed at Rs.7,000/- per month, which is not correct keeping in view the facts and circumstances of this case. Learned counsel for the appellants-claimants argues that it has already come on record that though the deceased was undergoing the graduation course but she had already obtained certificate in Bakery course, which is a skilled qualification and therefore, monthly income of the deceased should have been equal to a skilled worker. Learned counsel for the appellants-claimants further submits that as per the notification issued by the Chandigarh Administration at the relevant time, the minimum income of a skilled worker is Rs.8,500/- per month and therefore, assessing the income for computation of the compensation @ Rs.7,000/- per month, by the Tribunal, was incorrect. Learned counsel for the claimants/appellants in FAO-6612-2016 submits that as per the law laid down by the Hon'ble Supreme Court of India in **Pranay Sethi's**

case (supra), the claimants are entitled for consortium @ Rs. 80,000/-, which has not been granted by the Tribunal while assessing the compensation in the Award given.

Learned counsel for respondent No. 2 in FAO-6612-2016 does not dispute the fact that the deceased had undergone the Bakery course, which is a skilled qualification, certificate of which has already been produced on record as Ex.P-4. Learned counsel for respondent No. 2 in FAO-6612-2016 only submits that the Tribunal in its wisdom has rightly assessed the income hence, same needs no modification. Learned counsel for respondent No. 2 in FAO-6612-2016 is not able to dispute that as per the settled principle of law settled by the Hon'ble Supreme Court of India in **Pranay Sethi's case (supra)**, the claimants are entitled for consortium @ Rs. 80,000/-.

The claim of the appellants/claimants for enhancement of compensation is well founded. Once, the deceased had a qualification, which is a skilled qualification, the same could not be ignored by the Tribunal so as to treat the deceased as an unskilled worker so as to compute the income. Nothing has come on record as to why the skilled qualification of the deceased in respect of a Bakery Course has been ignored to assess the monthly income. The qualification of the Bakery Course is good enough to treat the deceased as a skilled worker. Though, for improving the qualification, the deceased was undergoing Graduation Course, but merely the said fact is not good enough to ignore the skilled qualification, which the deceased already possessed at the time of her

death. In the facts and circumstances of the present case, the deceased has to be treated as a skilled worker so as to compute her monthly income and the Award needs to be modified to the said extent and is accordingly done.

Further, learned counsel for respondent No. 2 in FAO-6612-2016 has not been able to rebut the fact that as per settled principle of law in **Pranay Sethi's case (supra)**, consortium of Rs. 80,000/- is also to be awarded to the claimants, which has not been computed by the Tribunal while assessing the compensation. Keeping in view the facts as recorded hereinbefore, the compensation for which the claimants are entitled as per the settled principle of law in **Pranay Sethi's case (supra)** is as under :-

CALCULATION OF PROPOSED ENHANCED COMPENSATION

	By the Tribunal	Modified by this Court
Monthly income	Rs. 7,000/-	Rs. 8,500/-
Addition of future prospect	50% of Rs. 7000 = Rs. 3500	40% of Rs. 8500 = Rs. 3400
Total monthly income after adding Future Prospect	Rs. 7000 + Rs. 3500/- = Rs. 10500/-	Rs. 8500 + Rs. 3400/- = Rs. 11,900/-
Annual income	10500 X 12 = 126000/-	11900 X 12 = 142800/-
Deduction towards Personal expenditure (50%)	50% of 126000/- = Rs. 63000/-	50% of 142800/- = Rs. 71400/-
Multiplier applied (18)	63000 X 18 = 11,34,000/-	71400 X 18 = 12,85,200/-
Funeral expenses	25,000/-	15,000/-
Consortium	---	80,000/-
Loss to Estate	25,000/-	15,000/-
Total	1134000+25000+25000 = Rs. 1184000/-	1285200+15000+80000+15000 = Rs. 1395200/-
Less already awarded by Tribunal	----	Rs. 1184000/-
Enhanced compensation	----	Rs. 2,11,200/-

The Award of the Tribunal is modified as per chart depicted hereinbefore.

As per the above calculations, the claimants are entitled for the compensation of Rs.13,95,200/- instead of Rs.11,84,000/- and award dated 08.07.2016 passed by the Tribunal is accordingly modified and the rest of the award dealing with the grant of interest remains same. Compensation as assessed, be paid to the claimants within a period of two months from the receipt of copy of this order.

In the facts and circumstances of these cases, both the appeals are being disposed of in above terms.

April 07, 2021
naresh.k/kanchan

(**HARSIMRAN SINGH SETHI**)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No