IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

208-1 **FAO No.601 of 1992**
Date of Decision : 21.09.2022

National Insurance Co. Ltd. ....Appellant

VERSUS

Amarjit Kaur & Others ....Respondents

208-2 **FAO No.816 of 1992**

Amarjit Kaur and Others ....Appellants

VERSUS

Bahal Singh & Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Shrenik Jain, Advocate for
Mr. Satish Jain, Advocate
for the appellant in FAO-601-1992 and
for respondent no.3 in FAO-816-1992.

Mr. Rajat Dogra, Advocate for
Mr. K.S. Brar, Advocate
for the appellants in FAO-816-1992 and
for respondent nos.1 to 3 in FAO-601-1992.

ALKA SARIN, J. (Oral)

The above-captioned appeals, one preferred by the Insurance Company and the other filed by the claimants, are being disposed off by this common order. The parties are hereinafter referred to as the claimants, driver and owner and the Insurance company for the sake of convenience.

The Motor Accident Claims Tribunal, Faridkot (hereinafter referred to as the 'Tribunal') vide award dated 02.01.1992 awarded a total compensation of Rs.1,92,000/- to the claimants on account of death of Kapur Singh (hereinafter referred to as the 'deceased') in a motor vehicle accident.

The brief facts relevant to the present *lis* are that it was averred by the claimants in the claim petition that on 19.08.1988, Kapur Singh along with Rajinder Singh was going to his village Wander Jatana from Kotkapura on a Bajaj Chetak scooter bearing registration no.PAR-8212. The scooter was being driven by Rajinder Singh on the left side of the road. At about 07.00 a.m., when both of them reached near village Wara Daraka, a truck bearing registration no.RSK-5845 (hereinafter referred to as the 'offending vehicle'), which was being driven by Bahal Singh in a rash and negligent manner at a high speed, came from the back side i.e. Kotkapura side and struck against the scooter being driven by Rajinder Singh. Both Rajinder Singh and Kapur Singh (deceased herein) received injuries and were taken to Civil Hospital, Faridkot. The accident was witnessed by Ajaib Singh. Statement of Rajinder Singh regarding the accident was recorded in the hospital at Faridkot. Kapur Singh (deceased herein) died on 20.08.1988 as a result of injuries received by him whereas Rajinder Singh died on 27.08.1988. The claim petition was contested by the respondents i.e. driver and owner of the offending vehicle, denying the manner in which the accident took place and stated that the accident took place due to the rash and negligent driving of the scooter by Rajinder Singh. The Insurance Company raised the usual objections.

On the basis of pleadings of the parties, the following issues were framed :

1. Whether Kapur Singh died as a result of the injuries suffered by him on 19.08.1988 when scooter on which he was driving met with an

accident with the truck no.5845 which was being driven by respondent no.1 ?

2. Whether the accident occurred due to rash and negligent driving of respondent no.1 ?

3. To what amount of compensation the claimants are entitled ?

4. Whether the claim petition is time barred ?

5. Whether the claim petition is barred by principle of estoppel, waiver and acquisence ?

6. Whether the claimants are the LRs of the deceased?

7. Relief.

The Tribunal held that income of the deceased was Rs.1210/- per month and an amount of Rs.1,92,000/- was awarded to the claimants which was worked out as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	Rs.1210
2	Amount after deduction towards personal expenses	[1210 - 410] = Rs.800
3	Annual income of the deceased after applying multiplier of 20	[800 x 20 x 12] = Rs.1,92,000
	Amount Awarded by the Tribunal	**Rs.1,92,000**

Learned counsel appearing on behalf of the Insurance Company has contended that multiplier of 20 has wrongly been applied by the Tribunal and the same ought to have been applied as 16 as per age of the deceased, who was 34 years of age. It is further contended that the income of the deceased as been assessed on the higher side.

Per contra, learned counsel for the claimants has contended that salary of the deceased has correctly been taken as Rs.1210/- per month inasmuch as the same stood duly proved by PW-2 Om Parkash. It is further the contention that no amount has been awarded to the claimants towards loss of future prospects and under the conventional heads as per the settled law.

I have heard learned counsel for the parties.

In the present case the factum of the accident is not in dispute. The argument raised by learned counsel for the Insurance Company that the income of the deceased is taken on the higher side, cannot be accepted inasmuch as it has duly been proved by PW-2 Om Parkash that the deceased was drawing a salary of Rs.1210/- per month. There is no evidence to the contrary that the deceased was not drawing a salary of Rs.1210/- per month.

The argument raised by learned counsel for the Insurance Company that a wrong multiplier of 20 has been applied deserves to be accepted. As per the law laid down by the Hon'ble Supreme Court in **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121]**, the multiplier ought to have been applied as 16.

Further perusal of the award reveals that no amount has been awarded to the claimants towards loss of future prospects and under the conventional heads.

Keeping in view the fact that the salary of the deceased has duly been proved as Rs.1210/- per month, I deem it appropriate to take income of the deceased as Rs.1210/- per month. Keeping in view the age of the deceased, who was 34 years of age, the multiplier has wrongly been taken as

20 which ought to have been taken as 16. Further, as per the law laid down by the Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Sarla Verma** (*supra*) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]**, an addition of 40% is to be made towards the future prospects of the deceased and a deduction of $1/3^{rd}$ is to be applied as there are three family members of the deceased. In view of the settled law, the claimants would be entitled to the enhanced compensation as well as compensation under the conventional heads. They are also entitled to 10% increase under the conventional heads as well as under the head consortium as per the law laid down in **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021 (4) RCR (Civil) 642]**. The modified compensation is re-worked out as under :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased	[1210 x 12] = Rs.14520
2	Annual dependency of the claimants after deduction of $1/3^{rd}$	[14520 - 4840] = Rs.9680
3	Future Prospects @ 40%	[9680 + 3872] = Rs.13552
4	Multiplier of 16	[13552 x 16] = Rs.2,16,832
5	Loss of Consortium (i) Parental (ii) Spousal (i) Filial	 Rs.44,000 Rs.44,000 Rs.44,000 Total Rs.1,32,000
6	Loss of Estate	Rs.16,500
7	Funeral Expenses	Rs.16,500
	Total Compensation	**Rs.3,81,832/-**
	Amount Awarded by the Tribunal	**Rs.1,92,000**
	Enhanced amount	**Rs.1,89,832/-**

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 9% from the date of the award till the realization of the entire amount. The amount shall be apportioned between the claimant-appellants as directed by the Tribunal.

In view of the above discussion, the appeal filed by the Insurance Company being FAO No.601 of 1992 is partly allowed and the appeal filed by the claimants being FAO No.816 of 1992 is allowed. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

21.09.2022
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO