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

**FAO-6573-2011
Date of Decision: 16.09.2022**

SOMA RANI AND ORS

..... Appellants

Versus

RAJESH AND ORS

..... Respondents

2) WITH FAO-6574-2011

SUDESH AND ORS

..... Appellants

Versus

RAJESH AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Amit Singla, Advocate
for the appellant(s) in both the case.

Mr. Punit Jain, Advocate
for respondent No.3.

Mr. Sanjeev Pabbi, Advocate
for respondent No.3.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, FAO-6573-2011 and FAO-6574-2011, which are arising from same cause of action and award dated 12.03.2011 passed by Motor Accident Criminal Tribunal, Hissar (for short 'Tribunal'), whereby Tribunal had awarded compensation of Rs.6,32,000/- in FAO-6573-2011 and a sum of Rs.6,32,000/- in FAO-

6574-2011, are hereby adjudicated.

2. For the sake of brevity and to avoid repetition, facts are borrowed from FAO-6573-2011 which are that on 20.05.2009, Kamal and Madho Ram (both deceased) were going in an Accent Car bearing registration No.HR-20N-0767 from village Gangwa to Nangthala. Deceased-Kamal was driving the aforesaid car and at about 4 PM when they reached at Bus stand Dhandur, a truck bearing registration No.HR-19E-0137 came from opposite side and struck their vehicle in rash and negligent manner. Both Kamal and Madho Ram received multiple injuries and died on the spot.

3. The appellants in terms of Section 166 of the Motor Vehicles Act, 1988 (for short '1988 Act') had filed claim petitions before learned Tribunal seeking compensation on account of death of Kamal and Madho Ram.

4. Learned Tribunal after framing different issues came to the conclusion that driver of truck was rash and negligent for causing accident which resulted into death of Kamal and Madho Ram. Learned Tribunal assessed income of Kamal as well Madho Ram Rs.4,000/- per month and accordingly determined amount of compensation.

5. Learned counsel for the appellant, who is appearing in both the appeals, contended that learned Tribunal has wrongly assessed income of both deceased @ Rs.4,000/- per month. The deceased was an agriculturist and was also working as cable operator. He fairly conceded that there is neither income tax return of both the deceased on record nor any documentary evidence disclosing income of both the deceased.

However, learned counsel pleaded that income of both deceased has been assessed on lower side and it should be increased and compensation be determined in the light of judgments of Hon'ble Supreme Court in **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680** and **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121**.

6. Per contra, learned counsel for the respondents contended that there is no evidence of income of the deceased, thus, learned Tribunal has rightly considered income Rs.4,000/- per month, however, he conceded that deceased was going in an Accent Car, which met with an accident. The deceased was staying in village Gangwa, which is adjacent to Hissar. The parents of the deceased are agriculturists and they are holding land. He fairly conceded that if income of deceased is re-assessed, the amount of compensation ought to be redetermine in view of judgment of Hon'ble Supreme Court in **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680** and **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121**.

7. I have perused the record and heard arguments of both sides.

8. It is settled proposition of law that where claimants are not able to prove income of the deceased, Court shall assess income on the basis of quality of life being led by the victim and his family, the general earning of an individual employed in that field, the qualification of the victim, and other considerations.

It is further settled law that Court should ensure while fixing

the notional income that the same is just in the facts and circumstances of the particular case. Neither it should be conservative nor too liberal. Compensation ought to be just and reasonable. It must be guided by principles of fairness, equity and good conscience.

9. In the absence of documentary evidence, the Court is left with no option except to determine income of the deceased in view of the facts and circumstances available on record. The deceased was going in an Accent Car. The deceased was 28 years old. He was married and having two minor children. The death took place on 20.05.2009. Keeping in mind, the entire facts and circumstances, it would be unjustified to assess income Rs.4,000/- per month. I am of the considered opinion that minimum income of deceased must be assessed @ Rs.5,000/- even though no evidence is available on record to show actual figure of income of the deceased. I am also keeping in mind that on the date of accident, the exemption limit for filing income tax return was more than Rs. 1 lakh so it can be considered that deceased was making income, which was less than exemption limit.

10. Considering income of deceased Rs.5,000/- per month and judgment of Hon'ble Supreme Court in **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680** and **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121**, the amount of compensation is redetermined as below:-

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Particulars	Amount of compensation
Annual income of the deceased	60,000/-
Future prospects	40.00%
Income after addition of future prospects	84,000/-
Deduction on account of personal expenses	1/4 th
Assessed income	63,000/-
Multiplier (17)	10,71,000/-
Loss of estate	16,500/-
Loss of consortium (44000x5)	2,20,000/-
Funeral expenses	16,500/-
Total	16,21,000/-

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11. The deceased was undisputedly an agriculturist and as per Jamabandi Ex.P-12 to Ex.P-14, the deceased Madho Ram figures in the cultivation column. The appellant pleaded that he was serving with M/s Vikas Cable Network, which is a Dish Operator concern. There were five dependents of the deceased. Keeping in mind number of dependents, the facts that he was an agriculturist, though not substantially proved yet claimed to be working with M/s Vikas Cable Network, I am of the opinion that it would be in the fitness of interest and justice that if income of the deceased is assessed Rs.5,000/- per month. Accordingly, the amount of compensation is redetermined.

12. Learned Tribunal has awarded interest @ 6% per annum, whereas as per afore-cited judgments, it should be 7.5% accordingly, the rate of interest on **enhanced amount** is increased from 6% per annum to 7.5% per annum. It is made clear that amount already paid shall be deduced from the redetermined amount of compensation.

13. The respondents are directed to make payment within 8 weeks from today.
14. The appeals are disposed of in the above-stated terms.

(JAGMOHAN BANSAL)
JUDGE

16.09.2022
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>

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