IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:15.9.2022

FAO No. 5537 of 2012 (O&M)

Tini Rani and others

---Appellants

versus

Des Raj and others

---Respondents

FAO No. 57 of 2013 (O&M)

United India Insurance Company Limited

---Appellant

versus

Tini Rani and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Chanderhas Yadav, Advocate
for the appellants in FAO- 5537 of 2012
for respondents No. 1 to 3 in FAO-57 of 2013

Mr. V. Ramswaroop, Advocate
for the insurance company

***

JAGMOHAN BANSAL, J.

1. By this common order, two appeals bearing FAO No. 5537 of 2012 and FAO No. 57 of 2013 which are arising from same incident and award dated 24.7.2012 passed by Motor Accident Claims Tribunal, Jhajjar (for short "Tribunal") whereby learned

Tribunal has awarded a sum of Rs.11,25,000/- to claimants alongwith interest @ 7.5% per annum, are hereby adjudicated. Claimants-appellants have filed appeal (FAO No. 5537 of 2012) seeking enhancement of compensation whereas the United India Insurance Company Limited (for short "insurer") has filed appeal (FAO No. 57 of 2013) challenging the amount of compensation.

2. Brief facts emerging from record and necessary for the adjudication of present appeals are that Satish Chahar (for short "deceased") was practicing at Jhajjar who remained President of District Bar Association, Jhajjar for the year 2001-02. The deceased on 15.5.2007 met with an accident at Budhera Chowk, Gurgaon while he was going in car bearing registration No. HR-99-Temp-3681 which was struck by truck bearing registration No. HR-46A/5604. The appellants preferred claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short "1988 Act") before Tribunal seeking compensation on account of death of the deceased.

The petition came up for consideration before learned Tribunal which assessed income of the deceased Rs. 9,000/- per month and accordingly determined amount of compensation. The Tribunal awarded a sum of Rs. 11,25,000/-.

3. Learned counsel for the appellant initially contended that income of the deceased has been assessed on lower side. However, on being asked that whether deceased was filing income tax return or not, learned counsel conceded that income of the deceased may be considered as assessed by Tribunal. He further pleaded that

appellants are entitled to enhancement of compensation because no addition on account of future prospects has been made and amount awarded under conventional head is on lower side than declared by Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121** and **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680**.

4. Per contra, Learned counsel for the insurer who is also counsel for appellant in FAO No. 57 of 2013 pleaded that he has no objection if compensation is determined as per judgments of Hon'ble Supreme Court in **Smt. Sarla Verma's case (supra)** and **Pranay Sethi's case (supra)**, however, contended that Tribunal has wrongly assessed income of deceased Rs. 9,000/- per month.

5. I have perused the record of the case and heard arguments of both counsels.

6. There is no dispute qua future prospects, loss of consortium, funeral expenses and loss of estate. Both the counsels have fairly conceded that amount of compensation deserves to be determined as per above-stated judgments of Hon'ble Supreme Court.

The dispute is confined to annual income of the deceased. It is settled proposition of law that where deceased/victim was admittedly working, however, 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.

Indubitably, the deceased was not filing income tax return. However, it is undisputed fact that he had acted as President of District Bar Association, Jhajjar. The accident took place on 15.5.2007 whereas he worked as President in the year 2001-02. The age of deceased was 36 years and it is well known fact that income of a practicing lawyer cannot be less than Rs. 9,000/- per month especially, when he is in practice for more than 10 years. Thus, I do not find force in the argument of counsel for the insurer that Tribunal has assessed income of deceased on higher side. Counsel for claimants has conceded that income of deceased as determined by Tribunal may be considered for re-determination of amount of compensation. Thus, taking into account income of deceased Rs. 9,000/- per month, the amount of compensation is re-determined as below:-

Under Head	Compensation awarded
Annual Salary of deceased	Rs. 1,08,000/-
Future prospects (40%)	Rs.43,200/-
Total	Rs. 1,51,200/-

Under Head	Compensation awarded
Deduction for personal expenses (1/3rd)	Rs. 50,400/-
Balance	Rs. 1,00,800/
Multiplier of 15	Rs.15,12,000/-
Loss of consortium (44000x3)	Rs. 1,32,000/-
Loss of estate	Rs. 16,500/-
Funeral expenses	Rs. 16,500/-
Total compensation	Rs. 16,77,000/-

7. The claimants are entitled to interest at the rate awarded by Tribunal from the date of petition till realization. It is made clear that amount already paid would be deducted from claim determined hereinabove.

The respondents are directed to make payment within eight weeks from today.

In view of above, appeal filed by the claimants is allowed and appeal filed by the insurance company is disposed of.

Pending miscellaneous applications, if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

15.9.2022
PARAMJIT

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