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

Reserved on: 23.08.2022
Pronounced on : 08.09.2022

FAO-5385-2014 (O&M)

Rajwati ...... Appellant

Versus

Mohd. Arif and others ...... Respondents

FAO-5386-2014 (O&M)

Bhoop Singh and others ...... Appellants

Versus

Mohd. Arif and others ...... Respondents

FAO-5389-2014 (O&M)

Baby Deepika ...... Appellant

Versus

Mohd. Arif and others ...... Respondents

FAO-5390-2014 (O&M)

Roshni and others ...... Appellants

Versus

Mohd. Arif and others ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Sagar Aggarwal, Advocate
for the appellants.

Mr. Sudhir Aggarwal, Advocate
for respondent No.2-owner.

Mr. Sanjiv Pabbi, Advocate
for the insurance company.

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Manjari Nehru Kaul, J.

This order shall dispose of above-said appeals as all of them have arisen out of the common award dated 05.03.2014 passed by the Motor Accident Claims Tribunal, Palwal. Brief facts of the case are taken from FAO No.5385 of 2014.

The appellant(s)-claimant(s) is in appeal before this Court to impugn the award dated 05.03.2014 passed by Motor Accident Claims Tribunal, Palwal (hereinafter called as 'the Tribunal') wherein the following compensation was assessed and awarded to the claimants on account of death of Sukhiya and Balwant Singh (hereinafter referred to as 'deceased No.1' and 'deceased No.2' respectively) and the injuries received by them in an accident, which took place on 28.06.2010:-

Compensation awarded to Rajwati (injured)

Sr. No.	***Head***	***Amount***
1	Actual expenses spent on medical treatment	Rs.1,31,000/-
2	For pain and suffering	Rs.10,000/-
3	Transportation, special diet and attendant charges	Rs.2,000/-
4	Loss of income	Rs.6,000/-
5	On account of 10% disability	Rs.25,000/-
	Total compensation	Rs.1,74,000/-

Compensation awarded for Sukhiya(deceased No.1)

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.3,000/-
2	Annual income (Rs.3,000 x 12)	Rs.36,000/-
3	Deduction towards personal expenses (1/3)	Rs.12,000/-
4	Annual Dependency (Rs.36,000 – Rs.12,000)	Rs.24,000/-

Sr. No.	*Head*	*Amount*
5	Multiplier	5
6	Total dependency (Rs.24,000 x 5)	Rs.1,20,000/-
7	Transportation and last rites	Rs.10,000/-
	Total compensation	Rs.1,30,000/-

Compensation awarded to Deepika (injured)

Sr. No.	*Head*	*Amount*
1	Actual expenses spent on medical treatment	Nil
2	For pain and suffering	Rs.3,000/-
3	Transportation, special diet and attendant charges	Rs.2,000/-
4	On account of 8% disability	Rs.20,000/-
	Total compensation	Rs.25,000/-

Compensation awarded for Balwant Singh (deceased No.2)

Sr. No.	*Head*	*Amount*
1	Monthly income	Rs.7,500/-
2	Annual income (Rs.7,500 x12)	Rs.90,000/-
3	Deduction towards personal expenses (1/3)	Rs.30,000/-
4	Annual dependency (Rs.90,000 – Rs.30,000)	Rs.60,000/-
5	Multiplier	15
6	Total dependency (Rs.60,000 x 15)	Rs.9,00,000/-
7	Transportation and funeral expenses	Rs.10,000/-
	Total compensation	Rs.9,10,000/-

The Tribunal held that the claimants were entitled to receive aforesaid compensation, along with interest @ 9% p.a. from the date of filing of the petition till its realization, to be paid jointly and severally by respondents No.1 and 2, which was to be indemnified by respondent No.3-Insurance Company.

In brief, it was pleaded in the claim petition filed under Section

166 of Motor Vehicles Act that on the fateful day i.e. 28.06.2010 Sukhiya (hereinafter referred to as 'deceased No.1'), Rajwati, Roshni alongwith her children Deepesh and Deepika (hereinafter referred to as 'injured') were going in a car bearing registration No.HR-30G-9193 being driven by Balwant Singh (hereinafter referred to as 'deceased No.2') to village Kot. A truck container bearing registration No.HR-55D-4498 (hereinafter referred to as 'offending vehicle') being driven in a rash and negligent manner by respondent No.1-Mohd. Arif collided head on with the vehicle of the deceased. While deceased Nos.1 and 2 died at the spot on account of the injuries suffered, the other occupants of the car received injuries and were shifted to the hospital. A criminal case vide FIR No.231 dated 28.06.2010 under Sections 279, 337 and 304-A IPC was registered against the driver of the offending vehicle.

Rajwati vs. Mohd. Arif and other's case

Learned counsel for the appellant-claimant *inter alia* contends that the compensation awarded on account of the grievous injuries, including fracture supracondylar, fracture femur with fracture intra condylar, fracture 3rd metacarpal and fracture medieval comminuted and right body and right condyl etc. suffered by the injured, was grossly inadequate. The Tribunal had failed to take into account that the claimant on account of 10% permanent disability suffered by her would have to live with restricted knee movement for the rest of her life, which would inevitably cause hindrance to her in undertaking even ordinary pursuits of life. He submits that the Tribunal also failed to grant any compensation to the injured for her future medical expenses. Hence, he prays for enhancement of compensation awarded to the injured-appellant.

Per contra, learned counsel for the Insurance Company while opposing the prayer and submissions made by the learned counsel for the injured-claimant has vehemently argued that the compensation awarded to claimant-injured could not be said to be inadequate and the Tribunal while passing the impugned award had taken care of not only the pain and suffering etc. but also the permanent disability suffered by her. He, thus, prays for dismissal of the appeal.

Heard learned counsel for the parties and perused the relevant material available on record.

This Court finds force in the submissions made by learned counsel for the injured-claimant Rajwati. It is an admitted fact that the injured remained admitted as indoor patient in the hospital from 28.06.2010 to 13.07.2010 and underwent surgery during which DSC platings were inserted for the fracture in her left femur and IMF mandible right under General Anaesthsia. Hence, the compensation awarded under the pain and suffering head, special diet and attendant charges definitely needs to be enhanced as they are on the lower side. The injured-claimant is also entitled to future medical expenses as she has suffered 10% permanent disability. Therefore, the compensation awarded to the injured Rajwati is reassessed and modified as follows:

Sr. No.	***Head***	***Amount***
1	Actual expenses spent on medical treatment	Rs.1,31,000/-
2	For pain and suffering	Rs.25,000/-
3	Transportation, special diet and attendant charges	Rs.15,000/-

Sr. No.	*Head*	*Amount*
4	Loss of income	Rs.6,000/-
5	On account of 10% disability	Rs.50,000/-
6	Future medical expenses	Rs.20,000/-
	Total compensation	Rs.2,47,000/-

Bhoop Singh and others vs. Mohd. Arif and other's case

Learned counsel for the claimants submits that deceased No.1-Sukhiya, aged 55 years, was earning Rs.8,000/- per month by selling milk, however, the Tribunal had erroneously assessed the monthly income of the deceased @ Rs.3,000/- per month. He further submits that no amount under the head of future prospects had been awarded and even under the conventional heads, the compensation awarded by the Tribunal was not in consonance with the settled law. Hence, the compensation required to be reassessed and enhanced.

Per contra, learned counsel for the Insurance Company opposing the prayer and submissions made by the learned counsel for the claimants has vehemently argued that adequate compensation had been awarded by the Tribunal, which did not warrant any interference. He argued that the claimants had failed to lead any cogent and convincing evidence qua the income of the deceased. Hence, the Tribunal while treating the deceased as casual worker had rightly assessed her monthly income @ Rs.3,000/- per month.

Heard learned counsel for the parties and perused the relevant material available on record.

This Court does not find force in the submissions put-forth by the learned counsel for the claimants as no convincing evidence was led by the claimants qua the income of deceased No.1, therefore, the Tribunal rightly assessed the monthly income of the deceased @ Rs.3,000/- per month as per the minimum wages notified in respect of unskilled labourer for the relevant period. Still further, the prayer made by the learned counsel for the claimants for compensation qua future prospects is devoid of any merit as the deceased was 62 years old at the time of her death. Hence, the claimants are not entitled to any addition of income towards future prospects. However, at the same time since no compensation has been granted to the husband and two sons of the deceased for loss of spousal and parental consortium, hence, they would have to be compensated @ Rs.40,000/- each on that count as per settled law in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270***. The claimants would also be entitled to Rs.15,000/- each for loss of estate and for funeral expenses. It has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years, hence, 10% enhancement qua the above-mentioned conventional heads would have to be made while reassessing the compensation awarded. The amount of compensation under the conventional heads thus, stands modified to Rs.16,500/- each for loss of estate & funeral expenses. Besides this, the claimants, are entitled to Rs.44,000/- each, for loss of spousal and parental consortium respectively.

The compensation awarded for the death of Sukhiya is reassessed and modified as follows:

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.3,000/-
2	Annual income (Rs.3,000 x 12)	Rs.36,000/-

Sr. No.	***Head***	***Amount***
3	Deduction towards personal expenses (1/3)	Rs.12,000/-
4	Annual Dependency (Rs.36,000 – Rs.12,000)	Rs.24,000/-
5	Multiplier	5
6	Total dependency (Rs.24,000 x 5)	Rs.1,20,000/-
7	Loss of estate	Rs.16,500/-
8	Funeral expenses	Rs.16,500/-
9	Loss of consortium (Rs.44,000 x 3)	Rs.1,32,000/-
	Total compensation	Rs.2,85,000/-

Baby Deepika vs. Mohd. Arif and other's case

Learned counsel for the appellant-injured vehemently contends that the injured was 8½ years of age on the date of accident and on the face of it, a meagre amount of compensation had been awarded to her for the injuries including a fracture on left mid shaft femur with right distal end femur comminuted for which she was operated upon. He submits that the Tribunal gravely erred in denying compensation to the injured-claimant for the expenses incurred on her treatment after the accident in question on the ground that she had been reimbursed qua the same from a medical claim policy, which was in her name. It is further submitted that since the injured-claimant was a young girl aged 8½ years and had also suffered 8% permanent disability, the Tribunal while awarding the compensation should have also compensated her for her future medical expenses, loss of amenities and loss of academic year etc. which was erroneously overlooked while passing the impugned award.

Per contra, learned counsel for the Insurance Company while opposing the prayer and submissions made by the learned counsel for the injured-claimant has vehemently argued that the deduction made by the

Tribunal qua the medical expenses incurred by the injured, was perfectly justified as the injured-claimant had already been reimbursed from a medical health policy and hence, she could not be permitted to be compensated for the same expenditure twice. He further submits that even otherwise compensation awarded was adequate and did not warrant any interference.

Heard learned counsel for the parties and perused the relevant material available on record.

Hon'ble Supreme Court in ***Helen C. Rebello Vs. Maharashtra State Road Transport Corporation, 1998 AIR (SC) 3191***, has categorically held that the compensation awarded under the Motor Vehicles Act is statutory in nature, whereas, under an insurance policy, the compensation arises from the contract between the insured and the insurer. In an insurance policy, the indemnification received by the insured is on account of contribution of his own money towards the policy whereas, the compensation received under the Motor Vehicles Act, on account of an injury received or death, is not a result of any contribution made by the claimants. It would be relevant to reproduce the observations of the Apex Court in ***Helen C. Rebello's case (supra)***:-

> *"This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., same*

> *accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family, which such person knows, under the law, has to go to his heirs after his death either by succession or under a will could be said to be the 'pecuniary gain' only on account of one's accidental death. This, of course, is pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicle Act. There is no co-relation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contract to the contrary or any provisions of law."*

In view of the above, the Tribunal erred in deducting the amount of medical expenses reimbursed to the injured-claimant from her medical health insurance policy. The claimant suffered 8% permanent disability on account of which she remained admitted as indoor patient in the hospital from 28.06.2010 to 22.07.2010. Without a doubt, the injured-claimant would have undergone acute pain and suffering for which she deserves to be suitably and adequately compensated. On account of the injuries sustained in the accident, the injured-claimant has also not been adequately compensated for loss of amenities and loss of academic year.

The compensation awarded to injured Baby Deepika is thus, reassessed and modified as follows:

Sr. No.	***Head***	***Amount***
1	Actual expenses spent on medical treatment	Rs.63,500/-
2	For pain and suffering	Rs.25,000/-
3	Transportation, special diet and attendant charges	Rs.10,000/-
4	On account of 8% disability	Rs.30,000/-
5	Loss of academic year	Rs.25,000/-
6	Future medical expenses	Rs.20,000/-
7	Loss of amenities	Rs.1,00,000/-
	Total compensation	Rs.2,73,500/-

<u>Roshni and others vs. Mohd. Arif and other's case</u>

Learned counsel for the claimants submits that the Tribunal failed to appreciate that deceased No.2, aged 34 years, was running his business in the name and style of M/s Dipesh Engineering at Mujessar, Faridabad and earning Rs.24,000/- per month, which found support from the income tax returns of deceased No.2 for assessment years 2009-10 and 2010-11. He further submits that no amount under the head of future prospects had been awarded and even the compensation awarded by the Tribunal under conventional heads was not in consonance with the settled law. He still further submits that as deceased No.2 was the sole bread winner of the family, hence, the compensation needed to be reassessed and enhanced accordingly.

Per contra, learned counsel appearing for the Insurance Company while opposing the prayer and submissions made by the learned counsel for the appellants-claimants submits that the Tribunal while treating deceased No.2 as a skilled worker had rightly taken his monthly income at Rs.7,500/- per month, as per the State Government notification for the relevant period. He further submits that the compensation awarded by the Tribunal was adequate and hence did not warrant any interference.

Heard learned counsel for the parties and perused the relevant material available on record.

This Court concurs with the submissions made by learned counsel for the appellants-claimants that the amount of compensation awarded by the Tribunal is inadequate and requires to be enhanced in accordance with settled law. The deceased was 35 years old at the time of his death. Hence, the claimants are entitled to an addition of 40% in the income of deceased towards future prospects and the multiplier of 16 would be applicable in the case of the deceased as per settled law. No compensation had been granted to the widow, minor children and father of the deceased qua loss of spousal, parental and filial consortium respectively. They would be thus, entitled to Rs.40,000/- each for loss of spousal, parental and filial consortium as per ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270***. The claimants would be entitled to Rs.15,000/- each for loss of estate and for funeral expenses. It has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years, hence, 10% enhancement qua the above-mentioned conventional heads would have to be made. The amount of compensation under the conventional heads thus, stands modified to Rs.16,500/- each for loss of estate & funeral expenses. Besides this, the claimants, who are wife, minor children and father of the deceased, are entitled to Rs.44,000/- each, for loss of spousal, parental and filial consortium respectively.

The compensation awarded for the death of Balwant Singh is reassessed and modified as follows:

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.7,500/-
2	Future prospects (40%)	Rs.3,000/-
3	Annual income (Rs.7,500 + Rs.3,000 x12)	Rs.1,26,000/-
4	Deduction towards personal expenses (1/4)	Rs.31,500/-
5	Annual dependency (Rs.1,26,000 – Rs.31,500)	Rs.94,500/-
6	Multiplier	16
7	Total dependency (Rs.94,500 x 15)	Rs.15,12,000/-
8	Funeral expenses	Rs.16,500/-
9	Loss of estate	Rs.16,500/-
10	Loss of consortium (Rs.44,000 x 5)	Rs.2,20,000/-
	Total compensation	Rs.17,65,000/-

With these observations, the appeal(s) filed by the claimants are disposed of.

In FAO-5386-2014, the appellants-claimants No.2 and 3 shall be entitled to get an amount of Rs.44,000/- each as compensation awarded on account of loss of consortium while appellant No.1-Bhoop Singh shall be entitled to remaining amount of compensation.

In FAO-5390-2014, appellants-claimants No.2 to 4 shall be entitled to get Rs.2,00,000/- each, appellant No.5 shall be entitled to get Rs.1,50,000/- whereas appellant No.1 shall be entitled to get the remaining amount of compensation.

In view of the order of even date in FAO No.8331 of 2014, the insurance company shall be liable to pay the amount of compensation @ 9%

per annum from the date of filing of petition till its realization in all the appeals.

08.09.2022 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

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