IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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(1) **FAO-34-2016 (O&M)**
Date of decision: 15.11.2022

Dharambir .....Appellant

Versus

Kala @ Dharmender and others .....Respondents

(2) **FAO-136-2016 (O&M)**

Pardeep Kumar and another .....Appellants

Versus

Kala @ Dharmender and others .....Respondents

(3) **FAO-776-2016 (O&M)**

Ram Parshad .....Appellant

Versus

Kala @ Dharmender and others .....Respondents

(4) **FAO-1757-2016 (O&M)**

Ram Niwas and others .....Appellants

Versus

Kala @ Dharmender and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sandeep Thakan, Advocate
for the appellants in FAO-34-2016, FAO-1757-2016 and FAO-776-2016.

Mr. Jagjeet Beniwal, Advocate
for the appellants in FAO-136-2016.

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for respondent No.3-Bharti Axa Gen. Ins. Co. in all cases.

Mr. Punit Jain, Advocate
for respondent No.6-Shriram Gen. Ins. Co. in all cases.

Mr. Chanderhas Yadav, Advocate
for respondents No.1 and 2 in FAO-136-2016 and FAO-1757-2016.

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MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of the above referred four appeals as they arise out of the same accident and the facts and law point involved in them are identical. For the sake of convenience, facts are taken from FAO-34-2016.

The present appeals have been filed by the claimants against the award dated 26.08.2015 passed by learned Motor Accidents Claims Tribunal, Bhiwani (for short, 'the Tribunal') wherein the following compensation was awarded to the claimants on account of death of Birmati, Ankush, Shanti Devi and Sarita in a Motor Vehicular Accident which took place on 24.06.2012:-

Compensation awarded by the Tribunal to the appellants/claimants in FAO-34-2016 on account of death of Birmati:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5,000/-
2.	Multiplier	14
3.	Loss of dependency	Rs.93,240/-
4.	Loss of consortium to spouse	Rs.50,000/-
5.	Funeral expenses	Rs.25,000/-
6.	Loss of estate	Rs.25,000/-
	Total compensation	Rs.1,93,240/-

Compensation awarded by the Tribunal to the appellants/claimants in FAO-136-2016 on account of death of Ankush:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5,000/-
2.	Monthly Income after adding future prospects (50%)	Rs.7,500/-
3.	Deduction towards personal expenses (½)	Rs.3,750/-
4.	Multiplier	18

5.	Loss of dependency	Rs.3,750 x 12 x 18 = Rs.8,10,000/-
6.	Funeral expenses	Rs.25,000/-
7.	Loss of estate	Rs.25,000/-
	Total Compensation	Rs.8,60,000/-

Compensation awarded by the Tribunal to the appellants/claimants in FAO-776-2016 on account of death of Shanti Devi:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5,000/-
2.	Multiplier	7
3.	Loss of dependency	Rs.46,620/-
4.	Loss of consortium to spouse	Rs.50,000/-
5.	Funeral expenses	Rs.25,000/-
6.	Loss of estate	Rs.25,000/-
	Total compensation	Rs.1,46,620/-

Compensation awarded by the Tribunal to the appellants/claimants in FAO-1757-2016 on account of death of Sarita:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5,000/-
2.	Multiplier	15
3.	Loss of dependency	Rs.99,900/-
4.	Loss of consortium to spouse	Rs.50,000/-
5.	Loss of love and affection to minor children	Rs.2,00,000/- (Rs. 1 lakh each)
6.	Funeral expenses	Rs.25,000/-
7.	Loss of estate	Rs.25,000/-
	Total compensation	Rs.3,99,900/-

Learned counsel for the appellants/claimants argued that the Tribunal failed to appreciate that deceased Birmati and Sarita were running a cosmetics shop and a cloth store from which they were earning Rs.15,000/- per month. However, the Tribunal assessed their income at only Rs.5,000/- per month.

Learned counsel still further argued that even otherwise deceased Shanti Devi was a home maker, hence, her income was wrongly assessed on the lower side at only Rs.5,000/- per month which was liable to be enhanced by treating her as a skilled worker. Learned counsel has further submitted that the Tribunal had also erred in not applying the multiplicand of '12' while calculating the income of all the above mentioned deceased. Therefore, the compensation required to be reassessed and accordingly enhanced.

Learned counsel for the appellants/claimants also argued that the Tribunal had failed to appreciate that deceased Ankush was working as a lab technician and earning Rs.12,000/- per month. His income was erroneously assessed by the Tribunal at Rs.5,000/- per month and hence it also required to be reassessed and modified accordingly. Still further, it was urged that the compensation awarded to the claimants under the conventional heads was also not in consonance with the settled ratio of law as held in ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121, Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333*** and ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270*** and required to be reassessed and enhanced.

Per contra, learned counsel appearing for the respondent-insurance company while controverting the submissions made by the counsel opposite, argued that there was no evidence led by the claimants with respect to the income of deceased Birmati, Ankush, Shanti Devi and Sarita and, therefore, the compensation awarded by the Tribunal could not be faulted with. Learned counsel further argued that the learned Tribunal erred in granting future prospects to the extent of 50% to the claimants on account of death of Ankush whereas as per the settled law future prospects should have been granted to the extent of 40%, hence, the same were liable to be reduced. It was further argued that rather the compensation awarded under the conventional heads by the Tribunal was exorbitant and on the higher side which was thus liable to be scaled down.

I have heard learned counsel and perused the relevant material on record.

This Court concurs with the submissions made by the learned counsel for the respondent-insurance company that since no evidence with respect to the income of deceased Ankush was led before the Tribunal, the income of the deceased at Rs.5,000/- per month by treating him as daily wager had been rightly assessed by the Tribunal. However, deceased Birmati, Shanti Devi and Sarita were home makers, therefore, they deserved to be treated as skilled workers on account of multifarious contribution made by each of them as a home maker to their respective families. In the circumstances, their monthly income is liable to be enhanced from Rs.5,000/- to Rs.5,226/- as per the the minimum wages notified by the State Government in respect of the skilled workers for the relevant period.

This Court concurs with the submissions made by learned counsel for the insurance company that the Tribunal erred in granting

50% towards future prospects to the claimants on account of death of Ankush and, therefore, claimants are entitled to future prospects only to the extent of 40%. Still further, claimants for deceased Birmati and Sarita would be entitled to future prospects as per the ratio of law laid down by Hon'ble Supreme Court in ***Pranay Sethi's case (supra)***.

A perusal of the compensation assessed by the Tribunal shows that the Tribunal erred in assessing the annual income of the deceased, therefore, compensation awarded has to be reassessed in consonance with the settled law.

The Hon'ble Supreme Court in ***Pranay Sethi's case*** *(supra)* has quantified the amount in the sum of Rs.15,000/- each for loss of estate and funeral expenses in addition to Rs.40,000/- each for loss of consortium. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement *qua* the above-mentioned conventional heads as per the ratio laid down in ***Pranay Sethi's case*** *(supra)*. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. Besides this, the claimants are entitled to Rs.44,000/- each, for loss of consortium. It would also be pertinent to mention here that proforma respondents No.7 to 10 in FAO-34-2016 and proforma respondents No.7 to 12 in FAO-776-2016 were not granted any compensation by the Tribunal, however, they would be entitled to compensation on account of loss of consortium only.

The compensation thus payable to the claimants would be as follows:-

Compensation to the appellants/claimants in FAO-34-2016 on account of death of Birmati:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5,226/-
2.	Annual Income	Rs.5,226/- x 12 = Rs.62,712/-
3.	Future prospects (25%)	Rs.15,678/-
4.	Total annual income	Rs.62,712/- + Rs.15,678/- = Rs.78,390/-
5.	Deductions towards personal expenses (½)	Rs.78,390/- (/) 2 = Rs.39,195/-
6.	Annual dependency	Rs.78,390/- (-) Rs.39,195/- = Rs.39,195/-
7.	Multiplier	14
8.	Total dependency	Rs.39,195/- x 14 = Rs.5,48,730/-
9.	Loss of consortium	Rs.44,000/- x 5 = Rs.2,20,000/-
10.	Funeral expenses	Rs.16,500/-
11.	Loss of estate	Rs.16,500/-
	Total compensation	Rs.8,01,730/-

Compensation to the appellants/claimants in FAO-136-2016 on account of death of Ankush:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5,000/-
2.	Annual Income	Rs.5,000/- x 12 = Rs.60,000/-
3.	Future prospects (40%)	Rs.24,000/-
4.	Total annual income	Rs.60,000/- + Rs.24,000/- = Rs.84,000/-
5.	Deductions towards personal expenses (½)	Rs.84,000/- (/) 2 = Rs.42,000/-
6.	Annual dependency	Rs.84,000/- (-) Rs.42,000/- = Rs.42,000/-
7.	Multiplier	18
8.	Total dependency	Rs.42,000/- x 18 = Rs.7,56,000/-
9.	Loss of consortium	Rs.44,000/- x 2 = Rs.88,000/-
10.	Funeral expenses	Rs.16,500/-
11.	Loss of estate	Rs.16,500/-
	Total compensation	Rs.8,77,000/-

Compensation to the appellants/claimants in FAO-776-2016 on account of death of Shanti Devi:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5,226/-
2.	Annual Income	Rs.5,226/- x 12 = Rs.62,712/-
3.	Deductions towards personal expenses (½)	Rs.62,712/- (/) 2 = Rs.31,356/-
4.	Annual dependency	Rs.62,712/- (-) Rs.31,356/- = Rs.31,356/-
5.	Multiplier	7
6.	Total dependency	Rs.31,356/- x 7 = Rs.2,19,492/-
7.	Loss of consortium	Rs.44,000/- x 7 = Rs.3,08,000/-
8.	Funeral expenses	Rs.16,500/-
9.	Loss of estate	Rs.16,500/-
	Total compensation	Rs.5,60,492/-

Compensation to the appellants/claimants in FAO-1757-2016 on account of death of Sarita:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5,226/-
2.	Annual Income	Rs.5,226/- x 12 = Rs.62,712/-
3.	Future prospects (25%)	Rs.15,678/-
4.	Total annual income	Rs.62,712/- + Rs.15,678/- = Rs.78,390/-
5.	Deductions towards personal expenses (1/4th)	Rs.78,390/- (/) 4 = Rs.19,597.5/- (rounded of to Rs.19,598/-)
6.	Annual dependency	Rs.78,390/- (-) Rs.19,598/- = Rs.58,792/-
7.	Multiplier	15
8.	Total dependency	Rs.58,792/- x 15 = Rs.8,81,880/-
9.	Loss of consortium	Rs.44,000/- x 4 = Rs.1,76,000/-
10.	Funeral expenses	Rs.16,500/-
11.	Loss of estate	Rs.16,500/-
	Total compensation	Rs.10,90,880/-

The claimants are, therefore, held entitled to compensation as reassessed hereinabove along with interest @ 8% per annum from the date of filing of claim petition till its actual realization. Out of the compensation amount, proforma respondents No.7 to 10 in FAO-34-2016 (O&M) and proforma respondents No.7 to 12 in FAO-776-2016 (O&M) would only be entitled only to Rs.44,000/- each for loss of consortium. The amount of compensation would be apportioned to the claimants in the same ratio as directed by learned Tribunal.

With these modifications, all the appeals stand disposed of in the above terms.

15.11.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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