IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 4747 of 2016 (O&M)
Date of decision : 15.12.2022
...

United India Insurance Company Ltd.
................Appellant

vs.

Deep Mala and others ....Respondents

2) FAO No. 5599 of 2016 (O&M)
...

Deep Mala and others ....Appellants

vs.

Gurpal Singh and others ....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant-Insurance company in FAO 4747-2016
and for respondent no.3 in FAO 5599-2016

Ms. Ekta Thakur, Advocate
for the appellants in FAO 5599-2016 and
for respondents No. 1 to 3 in FAO 4747-2016

Ms. Neha Jain, Advocate for
Mr. Manish Dadwal, Advocate for
respondent No.5 in FAO 4747-2016 and
for respondent No. 2 in FAO 5599-2016
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H. S. Madaan, J. (Oral)

By this common order, I intend to dispose of two appeals, bearing FAO-4747-2016 titled as 'United India Insurance Company Ltd. vs. Deep Mala and others' and FAO 5599-2016 titled as 'Deep Mala and others vs. Gurpal Singh and others', as both these appeals have been filed against the same award.

Briefly stated, facts of the case are that, on account of death of Ram Singh, aged about 37 years, said to be working as a truck driver, earning Rs.12,000/- P.M., in a roadside accident, which took place on 31.3.2015, at about 1.00 A.M., near M.K. Technology Park, Village Tangori, Sohana, District SAS Nagar, statedly on account of rash and negligent driving of truck No. PB-07-AL-4084 by respondent No.1 Gurpal Singh. Wife of deceased, namely Mrs. Deep Mala, aged about 32 years, mother Mehar Kaur aged about 60 years and father Bhagat Singh, aged about 65 years, had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents - Gurpal Singh – driver, Ranjit Kaur – owner and United India Insurance Company Ltd., Hoshiarpur – Insurer of offending truck No. PB-07-AL4084. The petition filed on 13.4.2015, was accepted by the Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') and in terms of award dated 30.3.2016, a compensation of Rs.21,87,180/- was awarded to the claimants, payable by respondent No.3 – Insurance company.

This award, left respondent no.3 – Insurance company, as well as the claimants aggrieved, and both of them have filed separate appeals. The Insurance company is seeking reduction of the compensation awarded, on the contrary, the claimants are seeking enhancement of such compensation.

Notice in both the appeals were issued. In the appeal filed by the appellant – Insurance company, claimants – respondents, have put in appearance, whereas in the appeal brought by the claimants, Insurance company has appeared, through counsel.

I have heard learned counsel for the parties, besides going through the record.

The Tribunal, on analysis of the evidence adduced by the parties, has taken age of the deceased to be 37 years; his occupation as a truck driver, assessing his monthly income as Rs.9,690/-. The Tribunal has taken into view the driving licence of deceased Ram Singh as Exhibit P-3, while taking his avocation as a truck driver. According to the claimants, he was earning Rs.12,000/- per month and to prove that they had produced certificate issued by Truck Operators Union Exhibit P-5, showing his monthly income to be Rs.10,000/-. In my view, taking into consideration the evidence adduced by the claimants, including this certificate, considering the wages drawn by truck driver nowadays, a sum of Rs.10,000/- ought to be taken as monthly income of the deceased.

The Tribunal has added 50% of the monthly income towards future prospects, when in terms of judgment ***National Insurance Company Limited vs. Pranay Sethi and others 2017 (4) RCR (Civil) 1009,*** when the deceased was below the age of 40 years, an addition of 40% should be made towards future prospects. Therefore, the future prospects is to be taken as 40% and by applying the same the monthly income of the deceased comes to Rs.10,000 + 4,000 = Rs.14,000/-.

The Tribunal has deducted 1/4th income of the deceased towards his personal and living expenses. However, keeping in view the number of dependent family members, being 3, the deduction should be 1/3rd in terms of judgment ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77***. Therefore, by deducting 1/3rd income, the the monthly income of the deceased comes out to Rs. 14,000 – 4666 = Rs.9,334/- and annual incomes works out to Rs.9334 x 12 = Rs.1,12,008/-.

The multiplier of 15 has been rightly taken by the Tribunal. Thus, by applying the same, the amount comes out to Rs.1,12,008 x 15 = Rs.16,80,120/-.

The Tribunal has awarded a sum of Rs.1 lac under the Head loss of consortium and Rs. 1 lac under the Head loss of love and affection. However, in terms of judgment ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others 2018 (4) RCR (Civil) 333,*** each of the claimant is entitled to get Rs.40,000/- for loss of consortium. In terms of judgment in ***Pranay Sethi's case (Supra)***, there would be an addition of 10% after every three years. Thus, this amount comes out to Rs.44,000 X 3 = Rs. 1,32,000/-. By applying that, the amount works out to Rs.16,80,120 + 1,32,000 = Rs.18,12,120/-

Funereal expenses have been awarded to the tune of Rs. 25,000/- by the Tribunal. Those are to be taken as Rs.15,000/- with 10% increase, which comes out to Rs.16,500/-. Another head, under which the claimants are entitled to get compensation is loss of estate, which would be Rs.15,000/- with 10% increase, which comes out to Rs.16,500/-.

In that way the total compensation works out to Rs.18,12,120 + 16,500 + 16,500 = Rs.18,45,120/-, whereas the

Tribunal has awarded compensation of Rs.21,87,180/-, which is on higher side.

Therefore, the appeal filed by the appellant -Insurance company i.e. FAO 4747-2016 is accepted. The impugned award is modified and instead of compensation of Rs.21,87,180/-, the compensation of Rs18,45,120/- is awarded to the claimants. The interest awarded by the Tribunal is 6% per annum, is found to be somewhat on lower side. The same is increased to 7.5% per annum from the date of filing of claim petition till actual realization. The direction with regard to imposition of penal interest payable @ 12 % per annum is not found to be appropriate and the same is withdrawn. The apportionment of compensation shall remain same in the same ratio as directed by the Tribunal in the impugned award.

Under the circumstances, the appeal filed by the claimants i.e. FAO 5599-2016 seeking enhancement of compensation stands dismissed.

(H.S. Madaan)
15.12.2022 **Judge**
chugh

Whether speaking / reasoned Yes / No

Whether reportable Yes / No