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

**225**

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**1. FAO No. 7070 of 2015 (O & M) and
Cross Objection No. 217-CII of 2016
Date of decision : 27.9.2022**

**HDFC ERGO General Insurance Company Limited ......Appellant**

**Vs.**

**Azad and others ......Respondents**

**2. FAO No. 7071 of 2015 (O & M) and
Cross Objection No. 212-CII of 2016**

**HDFC ERGO General Insurance Company Limited ......Appellant**

**Vs.**

**Banti and others ......Respondents**

**CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Rajneesh Malhotra, Advocate, for the appellant/Insurance co.

Mr. Pawan Attri, Advocate, for the respondents/
Cross Objectors No.1 and 2

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**TRIBHUVAN DAHIYA, J. (Oral)**

1. These two appeals filed by the appellant/Insurance company as well as cross objections filed by the respondents/claimants are being decided together, as the claim petitions arise out of the same accident and have been disposed of by a common award by the Motor Accident Claims Tribunal, Kurukshetra (in short 'the Tribunal').

2. These claim petitions arose out of death of Neelam, aged 29 years, stated to be a house wife, who was also doing work of collecting garbage etc.; and Manno, aged about 22 years, house wife, also doing the work of collecting garbage etc. Both of them were run over by the offending vehicle and died on

the spot on 28.10.2014 at about 6:30 a.m. The accident was caused due to rash and negligent driving of the car bearing registration No. HR-64-3316, driven by respondent No.1, as has been held by the Tribunal.

3. The Tribunal further held that the deceased Neelam, like any other house wife, must have been doing the household jobs like cooking, cleaning, washing, etc. Her notional income was, accordingly, assessed at Rs.9000/-per month, and age at the time of death was held to be 30 years. As per law laid down by the Supreme Court in ***Sarla Verma v. Delhi Transport Corporation; 2009 (3) RCR (Civil) 77,*** multiplier of '17' was applied and an amount of Rs.18,36,000/- (9000 X 12 X 17) was awarded, along with Rs.25,000/- towards funeral expenses. Therefore, a total amount of compensation awarded was Rs.18,61,000/- (18,36,000 + 25,000) with interest @ 9% per annum, from the date of filing of the claim petition till its realisation.

4. In the other claim petition filed on account of the death of Manno, who was also house wife, notional income was assessed as Rs.9000/-per month and her age was taken to be 22 years. By applying multiplier of '18', as per ***Sarla Verma case*** (*supra*), the amount of compensation was assessed Rs. 19,44,000/- (9000 X 12 X18). Besides, an amount of Rs.25,000/-was awarded towards funeral expenses. Thus, total compensation awarded to her was Rs. 19,69,000/- (19,44,000 + 25,000) along with interest @ 9% per annum, from the date of filing of the claim petition till its realisation.

5. The only argument raised by learned counsel for the appellant/ Insurance company is that in assessing compensation on the basis of notional income of the deceased no deduction towards personal expenses has been made by the Tribunal, which is contrary to law.

6. On the other hand, learned counsel for the respondents/cross objectors/claimants has argued that the claimants are entitled to enhanced

compensation as the Tribunal failed to award any amount towards future prospects and also under the admissible conventional heads.

7. Learned counsel for the parties have been heard, and award of the Tribunal perused.

8. As per law laid down by the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others;*** **2017 (4) RCR (Civil) 1009**, while assessing compensation in death cases, the Court is to be guided by the concept of "just" compensation to be determined on the foundation of fairness, reasonableness and equity on acceptable legal standards because such determination can never be in arithmetical exactitude. Following ***Sarla Verma case*** (*supra*), it was held that where the number of dependents/family members are two to three, the deduction towards personal and living expenses of the deceased should be $1/3^{rd}$; and where the number of dependents/family members are four to six, the deduction should be $1/4^{th}$.

9. In the case of deceased Neelam, the number of dependents/ claimants is five; and in case of deceased Manno, the number of dependents/ claimants is two. Accordingly, $1/4^{th}$ of the income has to be deducted towards personal and living expenses in case of Neelam, and $1/3^{rd}$ income has to be deducted towards personal and living expenses in the case of Manno for the purpose of assessing compensation.

10. It has been held by the Tribunal that age of deceased Neelam has been assessed as 30 years and that of Manno as 22 years, and both were self employed working as garbage collectors. Therefore, in terms of the law laid down by the Supreme Court in ***Pranay Sethi*** case *(supra),* each of them is entitled to an addition of 40% of the established income on account of future prospects. Keeping in view their age, multiplier of 17 should be applied in case of Neelam and multiplier of 18 should be applied in case of Manno, while

computing the amount of compensation.

11. Further, the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others***; **2017 (4) RCR (Civil) 1009** has held that reasonable figures under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% every three years. Accordingly, the respondents/claimants would be entitled to 10% enhancement with respect to compensation under the conventional heads; with 10% increase the amount under the conventional heads comes to Rs.16,500/-, Rs.44,000/- and Rs.16,500/- respectively.

12. On the aforesaid analysis, the claimants are held entitled to the following revised amount of compensation:

| Sr. No. | Head | Amount Deceased Neelam | Amount Deceased Manno |
|---|---|---|---|
| 1 | Monthly Income | 9000 | 9000 |
| 2 | Annual Income | 9000 x 12 =1,08,000 | 9000 x 12 =1,08,000 |
| 3 | Future Prospects | 40 % of 1,08,000 = 43200 | 40 % of 1,08,000 = 43200 |
| 4 | Total Income including future prospects | 1,51,200 | 1,51,200 |
| 5 | Deduction towards personal expenses | 1/4th = 37,800 = 1,13,4,00 | 1/3rd =50,400 =1,00,800 |
| 6 | multiplier | 17 x 1,13,400 = 19,27,800 | 18 x 1,00,800 = 18,14,400 |
| 7 | Loss of Estate | 16500 | 16500 |
| 8 | Loss of consortium | 2,20,000 (44000 x 5) | 88,000 (44000 x 2) |
| 9 | Funeral Expenses | 16500 | 16500 |
| 10 | **Total compensation** | **21,80,800** | **19,35,400** |

13. The award passed by the Tribunal dated 9.7.2015, therefore, stands modified and respondent/claimant **Neelam** is held entitled to compensation of an amount of **Rs. 21,80,800/-,** and respondent/claimant **Manno** is held entitled to compensation of an amount of **Rs. 19,35,400/-,** with interest at the rate of 9% each, from the date of filing the claim petition till its actual realization, which shall be jointly and severally paid in the same ratio as directed by the Tribunal.

14. Therefore, award dated 9.7.2015, passed by the Tribunal is modified in the afore stated terms and both the appeals are disposed of accordingly.

15. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

**(TRIBHUVAN DAHIYA)**
**JUDGE**

**27.9.2022**
Ashwani

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No