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

Decided on : 28.10.2022

FAO-9100-2014 (O&M)

Oriental Insurance Co. Ltd. ...... Appellant

Versus

Sandeep Kaur and others ...... Respondents

FAO-9255-2014 (O&M)

Sandeep Kaur and others ..... Appellant

versus

Sant Ram and another ..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Varun Sharma, Advocate
for the appellant in FAO No.9100 of 2014 and
for respondent No.2 in FAO No.9255 of 2014.

Ms. Ekta Thakur, Advocate
for the appellants in FAO No.9255 of 2014 and
for respondents No.1 to 4 in FAO No.9100 of 2014.

None for respondent No.1 in FAO No.9255 of 2014.

None for respondent No.5 in FAO No.9100 of 2014.

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Manjari Nehru Kaul, J.(Oral)

CM-25692-CII-2014

Learned counsel for the claimants seeks to place on record original certificate of B.Com Part III by way of additional evidence.

In absence of any objection raised by learned counsel for Insurance Company, present application stands allowed and abovementioned certificate is taken on record.

Main case

This order shall dispose of two appeals i.e. FAO No.9100 and 9255 of 2014 as they have arisen out of award dated 15.07.2014 passed by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal') passed in a claim petition under Section 166 of Motor Vehicles Act wherein the following compensation was assessed and awarded to the claimants on account of death of Gagandeep Singh (hereinafter referred to as 'deceased') in a motor vehicular accident, which took place on 20.09.2012:

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.7,000/-
2	Future prospects (50%)	Rs.3,500/-
3	Annual income (Rs.7,000 + Rs.3,500 x 12)	Rs.1,26,000/-
4	Deduction towards personal expenses (1/4th)	Rs.31,500/-
5	Multiplier	18
6	Total loss of dependency (Rs.94,500 x 18)	Rs.17,01,000/-
7	Funeral expenses	Rs.25,000/-
8	Loss of consortium	Rs.1,00,000/-
9	Loss of care and guidance	Rs.1,00,000/-
	Total compensation	Rs.19,26,000/-

The aforementioned amount of compensation along with interest @ 7.5% p.a. from the date of filing of the petition till the date of realization, was ordered to be paid jointly and severally by all the respondents.

Learned counsel for the claimants submits that the Tribunal fell into error while assessing the income of the deceased Gagandeep Singh, aged 25 years, as only Rs.7,000/- per month. He submits that the Tribunal failed to appreciate that the deceased after completion of his B.Com was pursuing M.Com and thus, his income should have been assessed at, at least Rs.15,000/- per month, if not more. He still further submits that the Tribunal had erred in not awarding any filial consortium to the parents of the deceased and even the compensation awarded under the other conventional heads was on the lower side.

Per contra, learned counsel for the Insurance Company has argued that the impugned award did not warrant any interference as the Tribunal had rightly treated the deceased to be a daily wager, however, the Tribunal had erred while assessing the monthly income of the deceased at Rs.7,000/- per month, which was much higher than the minimum wages notified by the State Government with respect to a daily wager for the relevant period. He has vehemently argued that it was the pleaded case of the claimants that the deceased was a student and no evidence too was led by them in support of the income of the deceased. Hence, the father of the deceased in the circumstances could not be considered as a dependent on him, hence, the Tribunal had erred in making deductions towards personal expenses to the extent of $1/4^{th}$ instead of $1/3^{rd}$. He submits that it is thus evident that the compensation awarded under the conventional heads was not in consonance with the settled law and required to be reassessed and modified accordingly.

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

This Court is of the opinion that no interference is warranted as far as the monthly income of the deceased, which has been assessed at Rs.7,000/- per month by the Tribunal, is concerned. No doubt, the deceased has been treated as a daily wager while passing the impugned compensation, however, the Tribunal has rightly assessed his monthly income at Rs.7,000/- per month in view of the educational qualifications of the deceased. This Court also finds merit in the submissions of the learned counsel for the claimants that the claimants should have been compensated for loss of parental and filial consortium. They are thus, entitled to Rs.40,000/- each for loss of parental and filial consortium as per the settled ratio of law in ***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. Since it has been held by the Hon'ble Supreme Court that the amounts under conventional heads would be subject to 10% enhancement after every three years, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate & funeral expenses. Besides this, the claimants are entitled to Rs.44,000/- for loss of parental and filial consortium.

This Court however finds merit in the submissions of the learned counsel for the Insurance Company that the Tribunal erred in making deductions towards personal expenses to the extent of 1/4th. Once the claimants themselves have pleaded that the deceased was a student, the natural presumption which would have to be drawn is that the father of the deceased could not have been dependent upon him. Still further, no evidence was led by the claimants to show that the father of the deceased was dependent on him. Hence, in the circumstances, deductions with respect to personal expenses could have been only to the extent of 1/3rd and not 1/4th, in the light of the settled law. Still further, the Tribunal fell into error by making an addition of 50% towards future prospects instead of 40%, which admittedly is not in consonance with the settled law.

This Court thus, deems it appropriate to reassess and modify the compensation awarded in the following terms:

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.7,000/-
2	Future prospects (40%)	Rs.2,800/-
3	Annual income (Rs.7,000 + Rs.2,800) x 12	Rs.1,17,600/-
4	Deduction towards personal expenses (1/3rd)	Rs.39,200/-
5	Multiplier	18
6	Total loss of dependency (Rs.78,400 x 18)	Rs.14,11,200/-
7	Loss of consortium (Rs.44,000 x 4)	Rs.1,76,000/-
8	Funeral expenses	Rs.16,500/-
9	Loss of estate	Rs.16,500/-
	Total compensation	Rs.16,20,000/-

The claimants are, therefore, held entitled to a total sum of Rs.16,20,000/- as compensation along with interest @ 9% per annum from the date of filing of the claim petition till its actual realization, which shall be apportioned in the following manner:

Sandeep Kaur (widow)	:	Rs.8,76,000/-
Jaskaran Singh (Minor Son)	:	Rs.4,00,000/-
Raminder Kaur (mother)	:	Rs.3,00,000/-
Narinder Singh (father)	:	Rs.44,000/-

Share of minor son shall be kept in FDR in a nationalized bank fetching maximum rate of interest till the attainment of the age of majority.

With the above modifications, the instant appeal(s) stand disposed of.

28.10.2022 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

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