IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on:13.12.2022

DATE OF PRONOUNCEMENT:20.12.2022

1. FAO-1004-2017 (O&M)

National Insurance Company Limited …………Appellants

Versus

Raj Rani &Ors ……..…Respondents

2. FAO-2321-2017(O&M)

Raj Rani and Ors .... Appellant

Versus

Roshan Lal and Ors. .... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Lalit Garg, Advocate,
for the appellant-Insurance Co. (in FAO-1004-2017) and
for respondent No.3 (in FAO-2321-2017).

Mr. Ashish Singh, Advocate for
Mr. Ashwani Arora, Advocate,
for respondents No.1 and 2 (in FAO-1004-2017) and
for the appellants (in FAO-2321-2017).

Mr. Rohit Kapoor, Advocate,
for respondent No.4 (in FAO-1004-2017) and
for respondent No.2 (in FAO-2321-2017)

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HARKESH MANUJA, J.

This order of mine shall dispose of two appeals bearing FAO No.1004 of 2017 titled as **National Insurance Company Limited Vs. Raj Rani & Ors.** (filed by Insurance Company for the reduction of compensation) and FAO No. 2321 of 2017 titled as **Raj Rani and Ors Vs Roshan Lal and Ors.** (filed by claimants praying for enhancement of compensation).

For convenience, facts are taken from FAO No. 1004 of 2017 i.e. the appeal filed by the Insurance Company.

On account of death of Dhruv Puri in road accident on 18.05.2016, a claim petition was filed before the learned Tribunal in which it was held that the accident took place due to rash and negligent driving of respondent No. 3/ driver. Learned Tribunal after observing that at the relevant time, even as per Minimum Wages Act 1948, the income of worker was ranging between Rs.6,000/- to Rs.8,000/-, considered the notional income of the deceased as Rs.7,000/- per month. Future prospects were awarded @50% and reduction on account of personal expenses was also ordered @ 50%. Therefore learned Tribunal awarded compensation in the following manner-

S.No	Heads of Claim	Amount (in Rs)
1.	Loss of dependency	Rs.11,34,000/-
2.	Funeral expenses	Rs.25,000/-
3.	Loss of love and affection	Rs.25,000/-
	Total	Rs.11,84,000/-

It is the said award dated 18.05.2016 which has been challenged by way of present two appeals.

Learned counsel for appellant/ Insurance Company contends that as the age of the deceased was admittedly 17 years at the time of accident and he was not having a driving license at that time, in view of section 4 and 5 of Motor Vehicles Act, 1998 which prohibits driving below the age of 18 years, he was not competent to drive at that time and therefore, contributory negligence must be attributed to him. He further contends that even the income assessed @Rs. 7,000/- per month was also on higher side as the deceased was a student and was not earning anything, so only notional income should have been taken. In support of his contentions, he places reliance upon judgment of this Court in FAO 8341-2015 titled as "**Smt. Saraswati Panwar and another vs. Yashanpreet Singh and Ors**", judgment of Hon'ble Apex Court in 2018(1) PLR 419 titled as **"Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd and Others",** judgment of Hon'ble Apex Court in **"Master Ayush vs The Branch Manager, Reliance General Insurance Co. Ltd. and Another"** in civil appeal number 2205-2206 of 2022 and judgment of this high court in FAO 2782 of 2001 titled as **"Baljit Singh and others vs Gurmeet Singh and others".** He also contends that future prospects should have been awarded @40% instead of 50% and compensation awarded under the conventional heads is also required to be reassessed.

Per Contra, learned counsel for the claimants/ respondent no 1 & 2 contends that as per settled principles of law in **"Mira Devi and another versus Himachal Road Transport Corporation and others"** reported as [2014 ACJ 1012] and also in **"Sudhir Kumar Rana versus Surendra Singh and others"** reported as 2008(3) R.C.R. (Civil) 265, contributory negligence cannot be attributed just because the deceased was minor and not having any driving license at the time of accident. Contributory negligence being a question of fact, positive evidence were required to be brought on record by the appellant and in the absence of any such material on record, contributory negligence cannot be attributed to the deceased. With respect to the notional income assessed by the learned Tribunal, he contends that the income assessed by the learned Tribunal is extremely on the lower side as the certificates of deceased were brought on record as Ex. P5 to P8 to show that he was pursuing his interest in hotel management and, being a brilliant student, was also called for counselling by National Council for Hotel Management and Catering Technology, Noida and thus, his income should have been assessed on higher side. In the support of his contention he relies upon judgment of Hon'ble Apex Court in **"Joginder Singh and another versus ICICI Lombard General Insurance Co. Ltd"** reported as [2019 ACJ 2783] to contend that in that case, even in 2009, income was assessed at Rs 15000/- per month. He also contends that deduction on account of personal expenses should have be 1/3 and not 1/2 as his father had predeceased him.

I have heard learned counsel for the parties and gone through the paper books of the appeals as well. With respect to the contributory negligence, I do not find force in the arguments for the learned counsel of the Insurance Company. Merely because the deceased was minor and not having any driving license, contributory negligence cannot be attributed to him. In view of judgment of Hon'ble Apex Court in **Sudhir Kumar Rana's** case (supra) and **Meera Devi's** case (supra), it can be deduced that contributory negligence is a question of fact and to prove it, there must be cogent evidence and in the absence of any positive cogent evidence, contributory negligence cannot be attributed to the deceased. Therefore, in the absence of any cogent evidence having adduced by the Insurance Company in this regard but only on the basis of not holding the driving license by deceased, no deduction can be made on account of contributory negligence.

With respect to the notional income assessed also, I find argument of the learned counsel of claimants more plausible. Only the fact that at the time of accident deceased was a student and non-earning, could not be a basis for assessing his notional income on the lower side as lot of other factors like educational qualification, family background and any other material factors are required to be looked into. In the present case, deceased after completing his 12th was pursuing his career in hotel management and as per the certificates brought on record; he was even called for counselling by the National Council for Hotel Management and Catering Technology, Noida. It has held by Hon'ble Apex Court in "**Zakir Hussein vs Sabir and others"** reported as **2015(2) RCR(Civil) 141** that notification of minimum wages is only a yardstick for assessing the income of the person but it is not an absolute factor to be taken into consideration, as at times it fails to meet the requirements that are needed to maintain the basic quality of life. In view of the fact and circumstances of the case, it cannot be denied that deceased was diligently pursuing his career and he would have earned handsomely in future, way above the minimum wages of a labourer, therefore the income of the deceased should have been assessed at least @ Rs 15,000 per month. However in view of ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, it cannot be denied that the future prospect should have been awarded @ 40% instead of 50%.

I do not find force in the argument of the learned counsel for the claimants that deduction on account of personal expenses should have been 1/3rd. Deceased was unmarried at the time of accident and there are shown to be only two dependents upon him. It has also come on record in the statement of PW1- mother of the deceased that her another son was also earning and he would not have been the sole earning person of the family, in that case, deduction of 50% on account of personal expenses is justifiable.

Further, In view of judgment of Hon'ble Apex Court in ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, and ***Pranay Sethi's case*** (supra), compensation awarded under conventional heads is also required to be reassessed. Claimants are entitled for Rs.16,500/- as compensation under the head of funeral expenses, loss of consortium is to be awarded to the tune of Rs.44,000/- x 2 (Rs.88,000/-) and Rs.16,500/- towards loss of estate by applying 10% increase under the conventional heads.

In view of what has been stated hereinabove, the appellants/claimants shall be entitled for the grant of following compensation:-

Sr.No.	***Nature***	***Amount in Rupees***
1.	*Annual Income of deceased*	*Rs. 1,80,000/-*
2.	*Add 40% of Future prospects*	*Rs.72,000/-*
3	*Total Income (Rs.1,80,000/- + Rs.72,000)*	*Rs.2,52,000/-*
4.	*Deduction (50%)*	*Rs.1,26,000/-*
5.	*Multiplier of 18 as per age of 17 years (Rs.1,26,000 /- X 18)*	*Rs.22,68,000/-*
7.	*Funeral Expenses*	*Rs.16,500/-*
8.	*Loss of Consortium (Rs.44000x2)*	*Rs.88,000/-*

9.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*23,89,000/-*
	Amount Awarded by the Tribunal	*11,84,000/-*
	Enhanced Amount	*12,05,000/-*

The grant of interest @ 6% (or 8% after 3 months) per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in case of ***Smt. Supe Dei and others Vs. National Insurance Company Limited and other***,(2009) (4) SCC 513 approved in a subsequent judgment passed in the case of ***Puttamma and others Vs. K.L. Narayana Reddy and another***, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claims shall be deducted from the enhanced compensation.

Disposed off in the above terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

December 20, 2022 **(HARKESH MANUJA)**
sonika **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*