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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 07.09.2022

1. **FAO-7643-2016 (O&M)**

United India Insurance Company Limited .... Appellant

Versus

Manju and others .... Respondents

2. **FAO-1082-2017(O&M)**

Manju and others …..Appellants

Versus

Jaspal Singh and others …..Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.V.Ramswaroop, Advocate
for the appellant in FAO-7643-2016 and
counsel for respondent No.3-Insurance Company
in FAO-1082-2017)

Mr. Naresh Kaushik, Advocate
for the respondents in FAO-7643-2016 and
counsel for the appellants in FAO-1082-2017.

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HARKESH MANUJA, J.

This order shall dispose of two appeals one bearing FAO No.7643 of 2016 titled as United India Insurance Company Limited Vs. Manju and others (filed by insurer of offending car) for setting aside the award and another bearing FAO No. 1082 of 2017 (filed by claimants for enhancement of compensation), hereinafter referred to as ‘the claimants’.

For convenience, the facts are taken from FAO No.7643 of 2016.

The accident in the present case took place on 21.12.2015 at about 8.00 p.m. After finishing the work, the deceased Om Parkash was going on his motor-cycle bearing registration No.HR-49-C-2375, and was hit by Santo Car bearing registration No. HP-34-B-2137 (hereinafter referred to as ‘offending vehicle’) being driven in rash and negligent manner by one Jaspal (Driver). Om Parkash was taken to Government Hospital, Sector-6, Panchkula from where he was referred to PGI, Chandigarh. During the treatment at PGI, Chandigarh, he died on 22.12.2015. At the time of accident, deceased was 32 years of age.

The claimants being dependent upon the deceased filed claim petition before learned Motor Accident Claims Tribunal, Panchkula, for short ‘the Tribunal’ praying for compensation to the tune of Rs.1.5 crore along with interest thereupon. The claimants pleaded that the deceased was earning Rs.30000/- per month as he was a ‘Mason’.

Learned Tribunal vide its award dated 04.11.2016 held the driver of the offending vehicle to be negligent. While assessing compensation, the age of deceased was taken as 32 years as was reflected in post-mortem report (Ex.P-2). Since the claimants could not prove the income of deceased, therefore, treating him to be an unskilled worker, his income was taken as Rs.9320/- in view of Schedule of Minimum Rates of Wages in the year 2015 (9320x12=1,11,840).

Since the deceased was survived by three dependents, a deduction of 1/3rd was made towards personal expenses of the deceased (1,11,840-37280=74560). Considering the age of deceased to be 32 years, multiplier of 16 was applied (74,560 x 16=11,92,960). An increase of 50% was given on account of future prospects. A sum of Rs.25,000/- was awarded to wife of the deceased towards funeral expenses, transportation and last rites etc. Further, she was awarded Rs. One lakh towards loss of consortium. In addition, two children were awarded Rs.One lakh towards loss of care and guidance. Thus, the claimants were held entitled to total compensation of Rs.20,14,440/- followed by interest at the rate of Rs.7% per annum. Since claimants No.2 & 3 were minor daughters, their compensation was ordered to be deposited in any fixed scheme in their name in any nationalized bank.

The award dated 04.11.2016 has been challenged by way of two appeals, i.e. FAO No.7643 of 2016; wherein the insurance company has prayed for setting aside the award and FAO No.1082 of 2017 has been filed by the claimants for enhancement of the compensation.

In the present appeals, learned counsel for Insurance Company has mainly agitated the issue of grant of future prospects to the extent of 50% to the claimants while assessing the compensation.

No serious challenge has been laid to the award including the income, multiplier or other conventional heads besides the issue of grant of future prospects at the rate of 50%.

On the other hand, it has been contended by learned counsel for the claimants that nothing has been awarded to the children on account of loss of consortium. It is further contended that the grant of interest at the rate of 7% per annum is on the lower side and the same needs to be enhanced.

Having heard learned counsel for the parties and after going through the paper-book as well as lower Court records, I am of the considered opinion that so far as income part is concerned, the same requires no interference by this Court inasmuch as the same has been assessed in terms of Schedule of Minimum Rates of Wages prevalent in the year 2015. The multiplier of 16 has been rightly applied in view of ***Sarla Verma Vs. Delhi Transport Corporation, 2009 ACJ 1298 (SC).***

As regards the future prospect to a self-employed person, this Court is of the considered opinion that the same requires interference. Learned tribunal has awarded future prospects to the tune of 50% whereas considering the age of the deceased, the same ought to have been given at 40%. In view of the judgment of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others,** 2017 (4) RCR (Civil) 1009, it has been held that in case of deceased being self-employed or on a fixed salary, addition of 40% of the established income has to be awarded where the deceased was below the age of 40 years. Relevant paragraph No.61 (iv) is reproduced hereunder:-

> *"61. (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

Besides this, applying the principle of law laid down by Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, the claimants are entitled for Rs.16,500/- as compensation under the head of funeral expenses. Considering the fact that the deceased left behind a young widow and two small children, the consortium should have been awarded under two different heads i.e. spousal consortium and filinial consortium for all the three, thus, making it to be Rs.44,000/- each i.e. Rs.44,000 x 3= Rs.1,32,000/- and Rs.16,500/- towards loss of estate by applying 10% increase under the conventional heads as well as under the head of consortium (spousal and filinial) as per the law laid down by Hon'ble Supreme Court in ***N. Jayasree and others Vs. Cholamandalam M.S. General Insurance Company Ltd.***, 2021 (4) RCR (Civil) 642.

In view of the discussions made hereinabove, the appellants are entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	***Particulars***	***Amount (Rs.)***
1.	*Annual Income of deceased Rs.9320/-x 12)*	*Rs.1,11,840/-*
2.	*Add 40% of Future prospects*	*Rs.44,736/-*
3.	*Total Income (Rs.1,11,840/- + Rs.44,736/-)*	*Rs.1,56,576/-*
4.	*Deduction (1/3rd)*	*Rs.52192/-*
5.	*Multiplier of 16 as per age of 32 years (Rs1,04,384 x 16)*	*Rs.16,70,144/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium*	*Rs.1,32,000/-*
8.	*Loss of love and care*	*Rs.1,00,000/-*
9.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.19,35,144/-*
	Amount Awarded by the Tribunal	*Rs.20,14,440/-*
	Recoverable Amount	*Rs.79,296/-*

The grant of interest @ 7% 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 **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513 approved in a subsequent judgment titled as **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 claimants shall be deducted from the enhanced compensation.

In view of the above, both the FAOs i.e. 7643 of 2016 titled as United India Insurance Company Limited Vs. Manju and others (filed by insurer of offending car) for setting aside the award and another bearing FAO No. 1082 of 2017 (filed by claimants for enhancement of compensation) are disposed off in the aforesaid terms and the impugned award dated 04.11.2016 passed by learned Tribunal is hereby modified accordingly.

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

A photocopy of this order be placed on the file of other connected case.

September 07, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

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