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

Decided on : 19.05.2022

FAO-1768-2018 (O&M)

HDFC Ergo General Insurance Co. Ltd. ...... Appellant

Versus

Seema Rani and others ...... Respondents

FAO-7130-2018 (O&M)

Seema Rani and others ..... Appellants

versus

Satbir Sharma and others ..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Varun Sharma, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellants in FAO No.1768 of 2018 and
for respondent No.3 in FAO No.7130 of 2018.

Mr. Chand Ram Olla, Advocate
for the appellants in FAO No.7130 of 2018 and
for respondents No.1 to 5 in FAO No.1768 of 2018.

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Manjari Nehru Kaul, J.(Oral)

This order shall dispose off FAO Nos.1768 and 7130 of 2018 as both of them have arisen out of the same award passed by the Motor Accident Claims Tribunal, Gurugram. Brief facts of the case are taken from FAO No.1768 of 2018.

The appellants-Insurance Company by way of instant appeal is impugning the award dated 19.01.2018 passed by Motor Accidents Claims Tribunal, Gurugram (hereinafter called as 'the Tribunal') passed in the claim petition under Section 166 of Motor Vehicles Act filed by claimants whereby following compensation was assessed and awarded to the claimants on account of death of Parveen Sharma in the road accident, which took place on 02.07.2016:-

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.8,000/-
2	Annual income 12 x Rs.8,000/-	Rs.96,000/-
3	Future prospects (40%)	Rs.38,400/-
4	Total income	Rs.1,34,400/-
5	Deduction towards personal expenses (1/4)	Rs.33,600/-
6	Annual dependency	Rs.1,00,800/-
7	Multiplier	16
8	Total dependency (Rs.1,00,800 x 16)	Rs.16,12,800/-
9	Loss of consortium	Rs.40,000/-
10	Loss of estate	Rs.15,000/-
11	Loss of love and affection	Rs.1,50,000/-
12	Funeral expenses	Rs.15,000/-
	Total compens	Rs.18,32,800/-

The amount of compensation along with interest @ 7.5% p.a. was ordered to be paid by the respondents jointly and severally. Rs.9,33,000/- out of the total compensation amount was was ordered to be paid to claimant No.1, Rs.3,00,000/- each to claimants No.2 and 3 and Rs.1,50,000/- each to claimants No.4 and 5 respectively.

Brief facts of the case as pleaded in the claim petition may be noticed as thus; on 02.07.2016 Parveen Sharma (hereinafter referred to as 'deceased') at about 6.15 am while riding his auto rickshaw from Delhi to Gurugram was hit by a canter (Swaraj Mazda) (hereinafter referred to as 'the offending vehicle') bearing registration No.HR-55U-2613, being driven by respondent No.1-Satbir Sharma in a rash and negligent manner. Resultantly, the deceased suffered injuries and later succumbed to them. FIR No.288 dated 02.07.2016 under Sections 279 and 304-A IPC was lodged by the father of the deceased subsequent to the accident against unknown vehicle. The deceased was stated to be more than 31 years of age on the date of accident and was earning Rs.20,000/- per month.

On being put to notice, respondents put in appearance. Respondents No.1 and 2 i.e. driver and the owner of the offending vehicle in their joint written statement denied the allegations and stated that no accident as alleged had taken place. It was further submitted that the driver of the offending vehicle was having a valid driving licence. Respondent No.3 -Insurance Company while filing its separate written statement submitted that FIR had been registered against an unknown vehicle and there was no number, make, colour or description of the vehicle mentioned while lodging the FIR with respect to the accident in question. It was also submitted that the driver of the offending vehicle in question was not holding a valid and effective driving licence on the date of accident and hence, the insurance company was not liable to indemnify the owner of the offending vehicle.

Learned counsel for the appellant-claimants has vehemently argued that the Tribunal has erred in awarding a meagre and inadequate compensation to the claimants and thus, it requires to be reassessed and modified for the following reasons:

(i) that the monthly income of the deceased was assessed by the Tribunal as only Rs.8,000/- per month by treating him as an unskilled worker.

However, since the deceased was an auto rickshaw driver he should have been treated as a skilled worker being proficient in driving and his income assessed accordingly.

(ii) that the amount awarded for loss of consortium was on the lower side and not as per the settled law.

On the other hand, learned counsel appearing for the insurance company while opposing the prayer and submissions made by counsel opposite submits that the involvement of the offending vehicle in the accident in question was highly suspect as the FIR was registered against an unknown vehicle. He submits that it was thus, obvious that just to grab compensation, the offending vehicle in question had been planted by the claimants. He further submits that the Tribunal had rightly assessed the monthly income of the deceased as Rs.8,000/- per month by treating him as an unskilled labourer and thus, it did not warrant any interference of this Court.

After hearing learned counsel for the parties and on perusing the case file, this Court is of the opinion that the compensation awarded by the Tribunal requires to be reassessed in consonance with the judgment rendered by the Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333.***

It has not been disputed that the deceased, aged 31 years, was an auto rickshaw driver. He should have been treated as a skilled worker by the Tribunal, while assessing his monthly income precisely for the reason that driving does require proficiency. Hence, as per the minimum wages notified by the State Government for the relevant period, his monthly income is taken as Rs.9,342.53 (rounded off to Rs.9,300/-). The Hon'ble Supreme Court in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270*** has quantified the amount in the sum of Rs. 15,000/- each for loss of estate and funeral expenses each in addition to Rs. 40,000/- each for loss of parental and filial consortium. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement qua the above-mentioned conventional heads, as was also re-assessed by the Hon'ble Supreme Court ***in Rasmita Biswal and others Vs. Divisional Manager, National Insurance Co. Ltd. and another : 2022(1) RCR(Civil) 344 as per the ratio laid down in Pranay Sethi's case (supra).*** Hence, the amount of compensation under the convention heads stands modified to Rs. 16,500/- each for loss of estate & funeral expenses. Besides this, the appellants, who are parents of the deceased, are entitled to Rs.44,000/- each, for loss of filial consortium respectively.

Resultantly, the compensation awarded by the Tribunal is reassessed as follows:-

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.9,300/-
2	Annual income 12 x 9,300/-	Rs.1,11,600/-
3	Future prospects (40%)	Rs.44,640/-
4	Total income	Rs.1,56,240/-
5	Deduction towards personal expenses (1/4)	Rs.39,060/-
6	Annual dependency (Rs.156240-Rs.39060)	Rs.1,17,180/-

Sr. No.	***Head***	***Amount***
7	Multiplier	16
8	Loss of annual future earning	Rs.18,74,880/-
9	Funeral expenses	Rs.16,500/-
10	Loss of spousal, parental and filial consortium respectively (Rs.44,000 x 5)	Rs.2,40,000/-
11	Loss of estate	Rs.16,500/-
12	Total compensation	Rs.21,47,880/- (rounded off to Rs.21,48,000/-)

The appellants-claimants are, therefore, entitled to a total compensation of Rs.21,48,000/- along with interest at the rate of 8% per annum from the date of filing of the claim petition till its actual realization in the same ratio as ordered by the learned Tribunal vide award dated 19.01.2018.

With the above modifications, the instant appeal stands disposed of.

19.05.2022 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

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