IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date Reserved: 19.12.2022
Date of pronouncement: 23.12.2022

1. FAO-4658-2017 (O&M) & XOBJC-196-CII-2017

National Insurance Company Ltd ………..…Appellants
Versus
Javinder Singh & Others ……..…Respondents

2. FAO-5305-2017(O&M) & XOBJC-194-CII-2017

National Insurance Company Ltd ………..…Appellants
Versus
Javinder Singh & Others ……..…Respondents

3. FAO-5307-2017(O&M) & XOBJC-195-CII-2017

National Insurance Company Ltd ………..…Appellants
Versus
Smt. Baljinder Kaur & Others ……..…Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. D.P Gupta, Advocate for the appellants in all appeals.
Mr. Gopal Sharma, Advocate
for respondents No. 1 to 4 in FAOs-4658 & 5305-2017,
for respondents No.1 to 3 in FAO-5307-2017.
Mr. Abhinav Singh, Advocate for
Deepak Aggarwal, for respondents No. 5 & 6
in FAO-4658 & 5305-2017,
for respondents No.4 & 5 in FAO-5307-2017.

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HARKESH MANUJA, J.

CM-16539-CII-2017 in FAO-5305-2017:
CM-16540-CII-2017 in FAO-5307-2017:

These are applications seeking condonation of delay of 32 days in filing the appeals.

For the reasons mentioned in the applications, which are supported by affidavits, sufficient cause has been shown for condoning the delay on account of completing the procedural formalities, thus, the same are allowed and delay of 32 days in filing the appeals is condoned.

Main Case:

This order shall dispose of three appeals bearing FAO No. 4658-2017 titled as “National Insurance Company Ltd vs. Javinder Singh & others”, FAO No. 5305-2017 titled as “National Insurance Company Ltd vs. Javinder Singh & others” and FAO No.5307-2017 titled as “National Insurance Company Ltd vs Smt. Baljinder Kaur & others” (all filed by insurance Company against the fastening of liability on it as well as for reduction of compensation amount), while XOBJC-196-CII-2017 in FAO no.4658 of 2017, XOBJC-194-CII-2017 in FAO No.5305 of 2017 and XOBJC-195-CII-2017 in FAO No.5307 of 2017 have been filed by the claimants for enhancement of compensation.

For convenience, the facts are taken from FAO No. 4658 of 2017 i.e. the appeal filed on behalf of the Insurance Company.

Brief facts of this case are that on 07.10.2014, Mandeep Singh S/O Amarjit Singh, Amarjit Singh, Paramjit Kaur and Jagjit Singh were going to Rajasthan in a Toyota Car with registration no PB-10-DW-9009 when their vehicle met with an accident with one tipper bearing registration no PB-10-EH-7106 (hereinafter referred as ‘offending vehicle’). In this accident Amarjit Singh and Jagjit Singh died at the spot, while Paramjit Kaur remained hospitalised for few days but she also expired on 27.10.2014.

On account of death of these three persons, 3 claim petitions were filed before the learned Motor Accident Claims Tribunal, Fatehgarh Sahib, (for short ‘the Tribunal’). After going through the claim petitions and evaluating the evidence led by the parties, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of respondent No.5 /driver and awarded compensation in each case.

With regard to the liabilities, learned Tribunal held that respondents No.5/6 i.e. Driver/ owner of the offending vehicle and appellant/ Insurance Company, respectively, were jointly and severally liable to pay the compensation amount however, the whole of the liability was to be borne by appellant in terms of the insurance policy.

It is the awards dated 22.02.2017 passed by the learned Tribunal, which have been challenged by way of present appeals as well as cross objections.

A perusal of all these appeals show that common questions of law and facts are involved which can be divided in two categories. The first question to be decided is regarding negligence & the liability i.e. who shall be held responsible for the accident in question. The second question is regarding the quantum of compensation awarded to the claimants which will be discussed for each case separately. Hence there will be two prong discussions.

A- <u>FASTENING OF LIABILITY</u>:

This question has been raised in FAO Nos.4658, 5305 and 5307 of 2017 and therefore qua this aspect all these appeals are being decided together.

Learned Counsel for the appellant/ Insurance Company contends that as per the statement of PW- Mandeep Singh, the accident took place when the Toyota Car struck the offending vehicle from the backside and in that case it was the responsibility of the deceased to maintain the requisite distance from the offending vehicle and in the absence thereof, the accident occurred due to his own negligence. He also contends that in these circumstance, contributory negligence on part of both the vehicles cannot be ruled out and in support of his argument, he relies upon the Road Regulations, 1989 as well as the judgments of Hon'ble Supreme Court in case of ***Nishan Singh & Ors vs Oriental Insurance Company Ltd.***, 2018 AIR (SC) 2118, **Kamlesh and others versus attar Singh and others** reported as 2016 (1) R.C.R. (Civil) 24 and **Rudhar Mani and another versus Kulvir Singh and others** in FAO number 1453 of 2007.

On the other hand, learned counsel for claimants argued that the deceased were not following the offending vehicle, rather it was the consistent case of claimants in FIR as well as in the statement of PW - Mandeep Singh that offending vehicle crossed the vehicle of the deceased at fast speed and applied brakes suddenly just after crossing the same and therefore, the above cited judgements were not applicable in this case, as the facts of this case were completely different.

I have heard learned counsel for both the parties and perused the paper-book as well as records of this case. Regarding the negligence/contributory negligence of the deceased driver of Toyota Car, I don't find much force in the argument of the learned counsel for the appellant/ Insurance Company. Though it is factually correct that the Toyota Car of the deceased hit the offending vehicle from behind, however, the sequence of events as narrated by the PW- Mandeep Singh in his affidavit as PW1/A as well as in cross examination, who is the only eye witness of the accident, makes it apparent that there was no negligence/contributory negligence on part of the deceased.

Perusal of his statement shows that the offending vehicle overtook the car of the deponent and after coming in front of the motor cycle suddenly stopped without any indication, which led to the accident. Relying upon the statement of PW-5 (eye-witness) whose statement could not be impeached despite lengthy cross- examination it can be recorded that the accident happened the way as described by PW-3 & no negligence can be attributed to the deceased. In addition, as the Insurance Company alleges negligence /contributory negligence, onus was on it to prove the same. However, neither any site plan was brought on record as prepared by the police nor any suggestion was made to PW-3 that the offending vehicle did not apply sudden & immediately breaks.

Judgments relied upon by the appellant/insurance company are not applicable in the facts and circumstances of this case. In **Nishan Singh's case** (supra), Judgment, specifically relied upon by the learned counsel, the offending vehicle was running ahead of the vehicle of the deceased for quite some time for about one kilometer and even at the time when the truck running ahead pressed the breaks, there was distance of 10-15 feet between the vehicles. In **Subhash Chandra** (supra), the offending vehicle was a tractor along with a trolley and court assumed that by the nature of its size and a trailer on tow, a tractor cannot be driven fast and therefore contributory negligence was attributed to the deceased.

In view of the discussion held above, Learned Tribunal rightly recorded that the accident occurred due to the rash and negligent driving of the driver/respondent No.5.

Thus, **FAO No. 4658 of 2017, FAO No. 5503 of 2017 and FAO No. 5507 of 2017** filed by the Insurance Company on the aspect of liability are hereby **dismissed**.

B- <u>QUANTUM OF COMPENSATION AMOUNT</u>:

The quantum of compensation awarded to the claimants/ appellants is also under challenge and this aspect of the appeals is required to be decided separately for each deceased.

FAO-5305-2017 (O&M) & XOBJC-194-CII-2017

At the first instance, it is made clear that in cross objections XOBJC-194-CII-2017 submission has been made for deceased Paramjit Kaur while this appeal pertains to deceased Amarjit Singh and vice versa. So, though the number of cross-objections are not being changed, but contentions are being taken from appropriate cross objection XOBJC-196-CII-2017. Similarly, in cross objection XOBJC-196-CII-2017 in FAO-4658 of 2017, content has been read from XOBJC-194-CII-2017.

Learned counsel for Insurance Company contends that as the claimants no 3 & 4 were married daughters, they were not dependents upon deceased and so deduction on account of personal expenses should have been on higher side. He further contends that learned Tribunal while assessing income @ Rs. 6000/- has rightly held that income from both the sources could not be proved and his income which was on account of agriculture work and selling milk would remain largely unaffected.

On the other hand, learned counsel for claimants contends that the Hon’ble Apex Court in case of **National Insurance Company Ltd. vs Birender and Ors.** reported as 2020(1) R.C.R. Civil 694 has held that all the legal representatives are entitled to claim compensation and therefore married daughters being legal representatives cannot be denied compensation from loss of dependency. He further contends that even if the income of deceased was not proved, on the basis of testimony of PW1- Mandeep Singh, PW2- Harjinder Singh (accountant of M/S Pritam Singh Daljit Singh Commission Agents) and PW3- Jaswant Singh (secretary of The Mahla Kotla Bet Dudh utpadik Sahikari Sabha), it cannot be denied that he was working as an agriculturist and selling milk and therefore, his earning must have been equal to the minimum wages of highly skilled worker in agriculture field as prevalent at that time. He also contends that no future prospects has been awarded in this case and compensation awarded under conventional heads is also required to be reassessed.

In my considered view, the submission by the learned counsel for Insurance Company do not hold force in view of judgment of Hon'ble Apex Court in **Birender**'s case (supra) where in it has been observed that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased or not. In view of section 8 of Hindu Succession Act, 1956, read with the schedule, daughters are class-I legal heir and the estate of father devolves upon her and for this reason as well, daughter (married or unmarried) of deceased are his legal representative on equal footing with a son. Even otherwise in context of India society married daughters always rely upon their father not merely for the unconditional emotional support but also for other material help and support as well. Therefore, in my considered opinion, they are equally entitled to claim compensation and therefore, submission in this regard is discarded.

Regarding the income of deceased, I find merit in the argument of learned counsel for the claimants that from the statements of abovementioned claimant's witnesses, there remains no doubt regarding the profession of deceased that he was earning income from his agriculture work as well as by selling milk. Even if learned Tribunal held that his income from both the sources could not be proved, it cannot be denied that the deceased on account of his long experience and physical labour in his work, must be earning at least equal to the minimum wages of highly skilled worker in agriculture at that time which were around Rs.9000/- per month (Rs.347/- per day).

However, argument with respect to the conventional heads and future prospects are correct. In view of judgment of Hon'ble Apex Court in case of ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, as the Learned Tribunal held the age of the deceased as 55 years, multiplier of 11 has been rightly applied. Further, in view of law laid down in case of ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, as the deceased was engaged in private employment, future prospects should have been awarded @ 10% of annual income. As the number of dependents was four, deduction of ¼th on account of personnel expenses is correct. Besides this, with respect to the compensation awarded under the other conventional heads, applying the principles of law laid down by Hon'ble Supreme Court in **Pranay Sethi's** case (supra), the claimants are entitled for Rs.16,500/- as compensation under the head of funeral expenses, loss of parental consortium is to be awarded to the tune of Rs.44,000/- x 4 (Rs.1,76,000/-) 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.9,000 x 12)*	*Rs. 1,08,000/-*
2.	*Add 10% of Future prospects*	*Rs.10,800 /-*
3	*Total Income (Rs.1,08,000/- + Rs.10,800)*	*Rs.1,18,800/-*
4.	*Deduction ¼th (Rs.1,18,800/4)*	*Rs.89,100/-*
5.	*Multiplier of 11 as per age of 55 years (Rs.89,100/- X 11)*	*Rs.9,80,100 /-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium (Rs.44,000x4)*	*Rs.1,76,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.11,89,100/-*
	Amount Awarded by the Tribunal	*Rs.7,19,000/-*
	Enhanced Amount	*Rs.4,70,100/-*

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Arguments made by the learned counsel for both the parties as well as the discussion made hereinabove will also hold good in this case as well and therefore, it cannot be denied that deceased on account of his long experience and physical labour in his work, must be earning at least equal to the minimum wages of highly skilled worker in agriculture at that time which were around Rs.9000/- per month (Rs.347/- per day).

As learned Tribunal held the age of the deceased as 60 years, multiplier of 9 has been rightly applied. As the deceased was engaged in private employment, future prospects should have been awarded @ 10% of annual income. As her notional income has been assessed on account of multifarious services rendered to her family, therefore, no deduction is liable to be made on account of personal expenses from her income. Besides this, claimants are entitled for Rs.16,500/- as compensation under the head of funeral expenses, loss of parental consortium is to be awarded to the tune of Rs.44,000/- x 4 (Rs.1,76,000/-) 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.8,500 x 12)*	*Rs.1,02,000/-*
2.	*Add 10% of Future prospects*	*Rs.10,200/-*
3	*Total Income (Rs.1,02,000/- + Rs.10,200)*	*Rs.1,12,200/-*
5.	*Multiplier of 11 as per age of 52 years (Rs.1,12,200/- X 11)*	*Rs.12,34,200/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium (Rs.44000x4)*	*Rs.1,76,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.14,43,200/-*
	Amount Awarded by the Tribunal	*Rs.7,85,000/-*
	Enhanced Amount	*Rs.6,58,200/-*

FAO-4658-2017 (O&M) & XOBJC-196-CII-2017

Arguments made by the learned counsel for both the parties as well as the discussion in Amarjit’s case which also hold good in this case except the difference that in this case on account of her multifarious activities towards the family members as well as the support in selling milk, her income should have been assessed at least equal to the minimum wages of skilled worker in agriculture at that time which were around Rs.8,500/- per month (Rs.331/- per day)..

As learned Tribunal held the age of the deceased as 52 years, multiplier of 11 has been rightly applied. As the deceased was engaged in private employment, future prospects should have been awarded @ 10% of annual income. As the number of dependents was three, deduction of 1/3rd on account of personnel expenses is correct. Besides this, claimants are entitled for Rs.16,500/- as compensation under the head of funeral expenses, loss of parental consortium is to be awarded to the tune of 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.

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.9,000 x 12)*	*Rs. 1,08,000/-*
2.	*Add 10% of Future prospects*	*Rs.10,800 /-*
3	*Total Income (Rs.1,08,000/- + Rs.10,800)*	*Rs.1,18,800/-*
4.	*Deduction1/3rd (Rs.1,18,800/3)*	*Rs.79,200/-*
5.	*Multiplier of 9 as per age of 60 years (Rs.79,200/- X 9)*	*Rs.7,12,800/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium (Rs.44000x3)*	*Rs.1,32,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.8,77,800/-*
	Amount Awarded by the Tribunal	*Rs.5,57,000/-*
	Enhanced Amount	*Rs.3,20,800/-*

In all the above appeals, grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by Hon'ble the Supreme Court in the case of ***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 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.

Disposed of in the above terms.

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

December 23, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

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