IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on:-24.11.2022

Date of pronouncement:- 06.12.2022

1. FAO-5230-2017 (O&M)

HDFC ERGO General Insurance Co. Ltd. …..Appellant

Versus

Hoshiyar Singh and others …..Respondents

2. FAO-1444 of 2018

Hoshiyar Singh and another …..Appellants

Versus

Premsat and others …..Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Ashwani Talwar, Advocate,
for the appellant/ Insurance Company
in FAO-5230-2017 and
for respondent No.3 in FAO-1444-2018.

Mr. Chanderhas Yadav, Advocate for
Mr. Harjit Yadav, Advocate,
for the appellants/ claimants in FAO-1444-2018
and for the respondents/ claimants in FAO No. 5230 of 2017

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HARKESH MANUJA, J.

On account of death of Babulal in an accident dated 09.01.2015, a claim petition was filed by his father and elder brother for seeking compensation. Motor accident claims Tribunal, Narnaul (hereinafter referred as learned Tribunal), after holding that accident occurred due to rash and negligent driving of the driver of the offending vehicle, vide award dated 02.05.2017 granted compensation of Rs.11,55,268/- to them.

It is this award, which has been challenged by way of present appeals. FAO No. 5230 of 2017 has been filed by the insurance company questioning the excessiveness of compensation awarded, on the other hand, FAO No.1444 of 2018 has been filed by the dependents of the deceased for seeking enhancement of compensation.

Learned counsel of the Insurance Company contends that the income of the deceased has been taken on the higher side. He elaborates this point by submitting that in the absence of any proof regarding profession of the deceased, learned Tribunal assessed his income after considering him as unskilled labourer and took his salary as Rs 8200/- per month, while on the date of mishap the minimum wages in the State of Haryana were notified as Rs 6660/- per month. He also contends that elder brother of the deceased being a major, cannot be considered as dependent and accordingly, his father will be the only dependent and therefore deduction on account of personal expenses should have been one half rather than one third. In support of his contention, he places reliance upon decision of this Court in case of "**New India Assurance Company Limited vs Hardeep and others" in FAO No. 4900 of 2016.**

Per Contra, learned counsel of the claimants contends that deceased was working as Supervisor with Jai Bharat Plastic Industries and earning Rs.8,800/- per month and a letter issued by the employer of the deceased was also brought on record as Ex. P2 and thus, income assessed by the learned Tribunal as Rs.8200/- per month was on lower side. He further contends that no future prospects have been awarded in this case. With regard to the deduction on account of personal expenses, he supported the award passed by the learned Tribunal by submitting that the brother of the deceased was dependent upon him and as such deduction of 1/3rd on account of personal expenses was appropriate which required no interference. He concluded his arguments by submitting that compensation awarded under conventional heads was on lower side and required reconsideration.

I have heard learned counsel of both the parties and gone through the paper book of the case. Regarding monthly income of the deceased, I do not find much substance in the argument raised by the learned counsel for the Insurance Company. It was 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 however, 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. Therefore, in the facts of this case, considering that a letter showing the income of deceased as Rs.8800/- was also brought on record by the claimants, if learned Tribunal considered that the deceased would have earned at least Rs.8200/-, the said finding requires no interference.

However, with respect to the deduction on account of personal expenses, I find force in the argument raised by learned counsel for the Insurance Company. In view of **Hardeep's case (supra),** an elder and major brother of the deceased, who was approximately 28-30 years of age cannot be considered as dependent. Therefore, deduction on account of personal expenses should have been one half rather than one third.

In view of **"National Insurance Company Vs. Pranay Sethi and others"**, reported as 2017(4) RCR (Civil) 2009, it cannot be denied that future prospect should have been awarded by the learned Tribunal. As the age of the deceased was 26 and he was in a private employment, future prospects @40% are awarded. In addition compensation awarded under conventional heads also require to be reassessed in view of **Pranay Sethi's Case (supra)** and therefore, Rs 16500/- are awarded for funeral expenses, Rs.16,500/- are awarded for loss of estate and Rs 88,000/- are awarded as consortium and compensation awarded under the head of loss of love and affection is liable to be set aside in view of the law laid down by the Hon'ble Supreme Court in case of "**Satinder Kaur @ Satwinder Kaur & Others. Versus United India Insurance Co. Ltd."** reported as 2020(3) R.C.R Civil 75.

Thus, in view of the discussions made hereinabove, the claimants/ respondents No.1 to 3 herein are entitled for following compensation, as detailed in the table:-

Sr.No.	**Particulars**	**Amount(Rs.)**
1.	Annual income of deceased	Rs.98,400/-
2.	Add 40% of future prospects	Rs. 39,360/-
3.	Total Income	Rs. 1,37,760/-
4.	After deduction of 1/3rd	Rs. 68,880/-
5.	Multiplier of 17 as per age of 26 years	Rs. 11,70,960/-
6.	Funeral Expenses	Rs. 16,500/-
7.	Loss of Consortium	Rs. 88,000/-
8.	Loss of Estate	Rs. 16,500/-

	TOTAL COMPENSATION:	Rs.12,91,960/-
	Amount Awarded by the Tribunal	Rs.11,55,268/-
	Enhanced Amount	Rs.1,36,692/-

Learned Tribunal granted interest @7% per annum from the date of petition, however it specified that if amount of compensation awarded in favour of claimants is not paid within 90 days from the date of award, then respondents shall be liable to pay interest @12% per annum with yearly rests. Learned counsel of the Insurance Company has also raised objection qua this aspect and contends that in view of "**National Insurance Co. Ltd. Vs. Keshav Bahadur and others"** reported as **2004(2) RCR Civil 99,** penal interest rate cannot be awarded. The above judgment has been subsequently followed by this Court in "**Oriental Insurance Company Limited Chandigarh vs Barinder Singh and others"** in **FAO No. 9186 of 2014** as well. Therefore, in view of judgment of Hon'ble Apex Court in **Keshav Bahadur's case (supra),** learned Tribunal has erred while specifying condition of enhanced interest rate if compensation is not paid within 3 months.

However, 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.

Consequently, the aforementioned appeals stand disposed of in the above terms.

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

December 06, 2022 **(HARKESH MANUJA)**
sonika **JUDGE**

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