In the High Court of Punjab and Haryana, at Chandigarh

1. F.A.O. No. 5325 of 2017 (O&M)

United India Insurance Company Limited

... Appellant(s)

Versus

Raman Kumari and others

... Respondent(s)

2. F.A.O. No. 5322 of 2017 (O&M)

United India Insurance Company Limited

... Appellant(s)

Versus

Sushma Kapila alias Sushma Devi and Others

... Respondent(s)

3. F.A.O. No. 7013 of 2017 (O&M)

Sushma Kapila alias Sushma Devi and Others

... Appellant(s)

Versus

Abhimanyu Randhawa and Another

... Respondent(s)

AND

4. F.A.O. No. 7865 of 2017 (O&M)

Raman Kumari and Another

... Appellant(s)

Versus

Abhimanyu Randhawa and Another

... Respondent(s)

DATE OF DECISION: 17.10.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Pardeep Goyal, Advocate
for the appellant (In FAO-5325-2017 and FAO-5322-2017) and for the respondent No.2 (FAO-7013-2017 and FAO-7865-2017).

Mr. Amandeep Saini, Advocate
for the appellants (In FAO-7013-2017) and for the respondent No.1 to 3 (In FAO-5322-2017).

Mr. Bikramjit Singh Randhawa, Advocate
for the appellants (In FAO-7865-2017) and for the respondent No.1 and 2 (In FAO-5325-2017).

Mr. Amandeep Chhabra, Advocate
for the respondent No.3(In FAO-5325-2017), respondent No.4(In FAO-5322-2017) and respondent No.1 (FAO-7013-2017 and FAO-7865-2017).

Anil Kshetarpal, J.

1. This order shall dispose of four connected appeals filed against the two different awards passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as "the Tribunal") arising from the similar accident.

2. The automobile accident took place on 14.01.2016 between a motorcycle and a cyclist in which the person sitting on the pillion of the motorcycle and the cyclist had lost their precious lives. The accident took place at 8.45 p.m. on 14.01.2016 in the area of Bus Stand, Brahmpur. Two claim petitions were filed. The first claim petition was filed by the widow and children of late Sh.Ashok Kumar who was on the cycle, whereas the second claim petition was preferred by the parents of late Sh.Anshul Chaudhary who died at the age of 20 years (unmarried). Both the claim petitions were allowed by the Tribunal.

3. Two appeals have been filed by the insurance company of the

motorcycle challenging the finding of the Tribunal with regard to the contributory negligence. It is claimed that the eye-witness, namely Sh.Mahesh Jyoti, while appearing as PW.2, has stated that late Sh.Ashok Kumar came in the middle of the road abruptly due to which the accident took place. Hence, it is claimed that late Sh.Ashok Kumar should be held liable for contributory negligence.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the awards passed by the Tribunal as well as the record of the Tribunal, which was requisitioned.

5. The deposition of PW.2-Sh.Mahesh Jyoti has been read over. In para 2 of the affidavit submitted in lieu of the examination-in-chief, he has stated that the cyclist came in the middle of the road and the motorcyclist, namely Sh.Abhimanyu Randhawa in a rash and negligent manner, at a high speed, struck against the cyclist. During his cross-examination, he has stated that the cyclist had almost crossed the road when the accident took place. Thus, the cyclist, who had almost crossed the road when the accident took place, cannot be said to have contributed to the occurrence of the accident. The Tribunal has, on the preponderance of probabilities, drawn a conclusion which is not proved to be suffering from any error. Hence, both the appeals filed by the insurance company are dismissed.

6. The claimants have also prayed for modification of the award passed by the Tribunal. In FAO-7013-2017, the widow and two children of late Sh. Ashok Kumar pray for enhancement. The claimants have been held entitled to ₹6,59,000/- as compensation along with the interest. The Tribunal assumed the income of the deceased @ ₹9,000/- per month, after deducting

1/3rd towards the personal expenses, the monthly dependency has been worked out at ₹6,000/-. The Tribunal, after assuming the age of deceased Sh.Ashok Kumar to be 55 years on the basis of post mortem report, has calculated the said amount.

7. The learned counsel representing the claimants contends that late Sh.Ashok Kumar was initially working in Dubai. Subsequently, he came back to India and opened a general merchandise shop in the village. Besides managing the shop, the deceased was also managing the agricultural land. It has come on record that late Sh.Ashok Kumar was the owner of the agricultural land measuring 27 kanals. The claimants have proved J-Form issued by the concerned Market Committee showing that late Sh.Ashok Kumar had sold the crop worth ₹2,07,930/- on 28.05.2015. The learned counsel contends that the Tribunal has wrongly ignored the aforesaid income on the ground that the agricultural land continues to exist. It has also been brought to the notice of the Tribunal by filing an application for additional evidence that late Sh.Ashok Kumar was born on 07.02.1961 and thus, his age on the date of accident was 54 years and 10 months and not 55 years. A copy of his matriculation certificate has also been filed.

8. Per contra, the learned counsel representing the insurance company contends that there is no evidence to prove that late Sh.Ashok Kumar was active in the agricultural work, therefore, no amount on that score can be awarded.

9. In this case, the claimants have proved the J-Form, which is issued by the State to the farmer when he sells his produce in the grain market. It is also proved on file that late Sh.Ashok Kumar was owner of a

fertile agricultural land measuring 27 kanals. An agriculturist is required to put in hard labour in order to grow any crop. It may not be a whole time job particularly in view of the modern equipments of cultivation, however, before the agricultural land is put to proper use, a farmer is expected to put in hard work in order to reap the harvest from the land. Moreover, late Sh.Ashok Kumar was a person, who apart from the agricultural land, was also running the general merchandise shop in the village. In such circumstances, the income assessed by the Tribunal @ ₹9,000/- is insufficient. Even if the cost of seeds, fertilizers, insecticides and cost of irrigation is deducted from ₹2,07,930/-, the income of the deceased from the agricultural land cannot be assessed to be less than ₹6,000/- per month. Apart from that, the Tribunal has assessed his income from the shop @ ₹9,000/- per month. Hence, the total income of the deceased is taken @ ₹15,000/- per month. As regards the application for additional evidence, the learned counsel representing the parties admit that as far as the multiplier to be applied is concerned, it would not make any difference if the age of the deceased is taken as 54 years or 55 years.

10. As per the judgment rendered by the Supreme Court in ***Sarla Verma and Others. v. Delhi Transport Corporation and Another, (2009) 6 SCC 121***, the multiplier of 11 is applicable. Apart therefrom, the claimants shall be entitled to increased income on account of future prospects @ 10% per annum. Each claimant shall be entitled to loss of consortium @ ₹40,000/- in accordance with the judgment rendered by the Supreme Court in ***Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram and Others RCR (Civil) 333***, ***New India Assurance Company***

Limited v. Somwati and Others (civil Appeal No. 3093 of 2020, decided on 07.09.2020 and ***United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur and others (2020) SCConline 410*** and apart therefrom, the claimants shall also be entitled to ₹30,000/- towards loss of estate and funeral expenses. Accordingly, the amount of compensation is re-worked as under:-

Sr. No.	**Heads under which the amount awarded**	**Amount awarded by the Tribunal (In ₹)**	**Amount awarded by the High Court (In ₹)**
A)	Monthly Income	9,000.00	15,000.00
B)	Future Prospects	NIL	1,500.00 (10% of the income assessed)
C)	Income Assessed after adding future prospects	NIL	16,500.00
D)	Deduction of the total income assessed	6,000.00 (9,000 – 3,000 i.e. 1/3rd of the monthly income)	11,000.00 (16,500-5,500 i.e. 1/3rd of the monthly income)
E)	Total dependency Assessed per month	6,000.00	11,000.00
F)	Annual dependency	72,000.00 (6,000 x 12)	1,32,000.00 (11,000 X 12)
G)	Amount assessed after applying Multiplier	5,04,000.00 (72,000 x 7)	14,52,000.00 (1,32,000 x 11)
H)	Funeral Expenses	25,000.00	15,000.00
I)	Loss of Estate	5,000.00	15,000.00
J)	Loss of Consortium to be awarded @ ₹40,000/- to all the three claimants.	1,25,000.00	1,20,000.00 (40,000x3)
K)	Total compensation awarded	6,59,000.00	16,02,000.00
L)	**Amount of compensation enhanced by this Court**	**9,43,000** (**16,24,044 – 6,59,000**)	

11. In F.A.O. No. 7865 of 2017, the claimants pray for modification of the award passed by the Tribunal on the ground that the Tribunal has failed to increase the income of the deceased on account of future prospects. It has been contended that in view of the five Judges Bench judgment in

National Insurance Company Limited v. Pranay Sethi and Others (2017) 16 SCC 680, the income of the deceased was liable to be increased @ 40%.

12. The learned counsel representing the insurance company does not dispute the factual position. The parents of the deceased shall also be entitled to ₹40,000/- each towards loss of consortium plus ₹30,000/- towards loss of estate and funeral expenses. Keeping in view the aforesaid facts, the amount is re-worked as under:-

Sr. No.	**Heads under which the amount awarded**	**Amount awarded by the Tribunal (In ₹)**	**Amount awarded by the High Court (In ₹)**
M)	Monthly Income	15,000.00	15,000.00
N)	Future Prospects	NIL	6,000.00 (40% of the income assessed)
O)	Income Assessed after adding future prospects	NIL	21,000.00
P)	Deduction of the total income assessed	7,500.00 (15,000 – 7,500 i.e. 50% of the monthly income)	10,500.00 (21,000-10,500 i.e. 50% of the monthly income)
Q)	Total dependency Assessed per month	7,500.00	10,500.00
R)	Annual dependency	90,000.00 (7,500 X 12)	1,26,000.00 (10,500 X 12)
S)	Amount assessed after applying Multiplier	16,20,000.00 (90,000 X 18)	22,68,000.00 (1,26,000 X 18)
T)	Funeral Expenses	25,000.00	15,000.00
U)	Loss of Estate	Nil	15,000.00
V)	Loss of Consortium to be awarded @ ₹40,000/- to all the three claimants.	Nil	80,000.00 (40,000x2)
W)	Total compensation awarded	16,45,000.00	23,78,000.00
X)	**Amount of compensation enhanced by this Court**	**7,33,000.00 (23,78,000 - 16,45,000)**	

13. The enhanced amount shall be payable to the claimants along with the interest @ 8% per annum from the date of filing of the claim petitions till the date of its realization.

14. The miscellaneous application(s) pending, if any, in all the appeals, shall stand disposed of.

(Anil Kshetarpal)
Judge

October 17, 2022
"DK"

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