IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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(1) **FAO-6706-2017 (O&M)**
Date of decision: 11.10.2022

Magma HDI, General Insurance Company Limited .....Appellant

Versus

Sandeep and others .....Respondents

(2) **FAO-477-2018 (O&M)**

Sandeep and others .....Appellants

Versus

Mohammad Azam and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Vishal Aggarwal, Advocate
for the appellants in FAO-6706-2017 and
for respondent No.2 in FAO-477-2018.

Ms. Amrita Nagpal, Advocate
for respondents No.1 to 3 in FAO-6706-2017 and
for the appellants in FAO-477-2018.

Mr. Sukhdeep Singh, Advocate
for respondent No.4 in FAO-6706-2017 and
for respondent No.1 in FAO-477-2018.

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MANJARI NEHRU KAUL, J. (ORAL)

The above referred appeals are being disposed of by this common order as they arise out of the same accident and impugned award dated 24.08.2017 passed by learned Motor Accidents Claims Tribunal, Karnal (for short, 'the Tribunal'). FAO-6706-2017 has been preferred by the insurance company to impugn the above said award whereas FAO-477-2018 has been preferred by claimants for enhancement of the compensation awarded to them by the Tribunal.

For the sake of convenience, facts are being taken from FAO-6706-2017, filed by the insurance company.

As per the pleaded case of the claimants in their claim petition filed under Section 166 of the Motor Vehicles Act, 1988, deceased Harbir Singh along with his wife was going towards Karnal on his motorcycle bearing registration No.UP-12H-2976 on 19.10.2015. In the meanwhile, tractor trolley bearing registration No.UK-8AD-3519 came in a rash and negligent manner driven by its driver and hit the motorcycle of the deceased. Resultantly, the deceased as well as his wife fell down on the road and sustained multiple grievous injuries. The deceased was admitted to General Hospital, Karnal, however, on account of the injuries suffered, he did not survive and died on 07.11.2015. FIR bearing No.376 dated 20.10.2015 was registered against the driver of the offending vehicle under Sections 279, 337 and 304-A IPC. The deceased was stated to be 36 years of age on the date of accident in question. It was claimed that he was an agriculturist and was also doing dairy farming. He was stated to be earning Rs.30,000/- per month. It was claimed by the claimants that the entire family had been dependent on the deceased but on account of his untimely death, they had not only been deprived of his love and affection but had also lost the sole earning member of their family.

On the basis of the material and other evidence led, the Tribunal awarded the following compensation to the claimants:-

Sr. No.	**Head**	**Amount**
1.	Monthly income	Rs.9,560/-
2.	Future prospects (50%)	Rs.4,780/-
3.	Monthly income after adding future prospects	Rs.14,340/-

4.	Deduction towards personal expenses (1/3rd)	Rs.14,340/- (/3) = Rs.4,780/-
5.	Loss of monthly dependency of the claimants	Rs.14,340/- (-) = Rs.9,560/-
6.	Loss of annual dependency after applying multiplier of '15'	Rs.9,560/- x 12 x 15 = Rs.17,20,800/-
7.	Medical bills	Rs.1,67,227/-
8.	Loss of estate and funeral and transportation expenses etc.	Rs.25,000/-
9.	Loss of consortium to claimant No.3	Rs.1,00,000/-
10.	Love and affection to the minor children	Rs.2,00,000/-
	Total compensation	Rs.22,14,228/-

Learned counsel appearing for the insurance company has vehemently argued that since the amount of compensation awarded is exorbitant and not in consonance with the settled law, it requires to be reassessed and scaled down accordingly. Learned counsel submits that the claimants failed to produce any proof of income of the deceased and hence, the Tribunal rightly considered him to be an unskilled labourer. However, while assessing the income of the deceased, the Tribunal erred in assessing his income as Rs.9,560/- per month which was much higher than the minimum wages notified by the State Government in respect of unskilled labourer. Learned counsel submits that as per the Government notification for the relevant period, the minimum wages of an unskilled labourer had been notified as Rs.7,600/- per month. It has also been submitted that even under the conventional heads, the compensation awarded was exorbitant inasmuch as the claimants were awarded Rs.1 lakh each for loss of consortium and loss of love and affection. Besides this, learned counsel for the insurance company also prayed for reassessing the compensation awarded with respect to the future prospects as the claimants had been erroneously awarded future prospects to the extent of 50%.

On the other hand, learned counsel for the claimants has opposed the submissions made by the counsel opposite and has submitted that the claimants were totally dependent on the deceased and hence the Tribunal did not err in awarding the impugned compensation. She prayed for upholding the compensation awarded.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court concurs with the submissions made by the counsel for the insurance company that the monthly income of the deceased has been assessed on the higher side and is not in consonance with the settled law. The monthly income is, therefore, reassessed as Rs.7,600/- as per the minimum wages notified by the State Government in respect of the unskilled worker for the relevant period. Further, the Tribunal has also erred in awarding 50% towards future prospects, which yet again is not in consonance with the settled law. The claimants are entitled to only 40% towards future prospects as admittedly no cogent evidence was led qua the income of the deceased. The Tribunal has further erred in granting Rs.1,00,000/- to claimant No.3 for loss of consortium and Rs.1,00,000/- each to claimants No.1 and 2 for loss of love and affection. The Hon'ble Supreme Court in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270*** has quantified the amount in the sum of Rs.40,000/- for loss of consortium and in the sum of Rs.15,000/- each for loss of estate and funeral expenses. The claimants, who are wife and two sons of the deceased would, therefore, be entitled to only Rs.40,000/- each for loss of 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 per the ratio laid down in ***Pranay Sethi's case*** *(supra)*. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. Besides this, the claimants, who are minor sons and widow of the deceased, are entitled to Rs.44,000/- each, for loss of parental and spousal consortium respectively.

The compensation thus payable to the claimants would be as follows:-

Sr. No.	**Head**	**Amount**
1.	Monthly Income	Rs.7,600/-
2.	Annual Income	Rs.7,600/- x 12 = Rs.91,200/-
3.	Future prospects (40%)	Rs.91,200/- x 40% = Rs.36,480/-
4.	Total annual income	Rs.91,200/- + Rs.36,480/- = Rs.1,27,680/-
5.	Deductions towards personal expenses (1/3rd)	Rs.1,27,680/- (/) 3 = Rs.42,560/-
6.	Loss of annual future earnings	Rs.1,27,680/- (-) Rs.42,560/- = Rs.85,120/-
7.	Multiplier	15
8.	Loss of future earnings	Rs.85,120/- x 15 = Rs.12,76,800/-
9.	Loss of consortium	Rs.44,000/- x 3 = Rs.1,32,000/-
10.	Funeral expenses	Rs.16,500/-
11.	Loss of estate	Rs.16,500/
12.	Medical Bills	Rs.1,67,227/-
	Total compensation	Rs.16,09,027/- (rounded off to Rs.16,09,000/-)

The claimants are, therefore, held entitled to a total sum of Rs.16,09,000/- as compensation along with interest @ 8% per annum from the date of filing of claim petition till its actual realization, which shall be paid by the insurance company and driver/owner of the offending vehicle jointly and severally and would be apportioned to the claimants in the same ratio as directed by learned Tribunal.

The appeal filed by the insurance company i.e. FAO-6706-2017 is allowed in the above terms whereas appeal filed by the claimants i.e. FAO-477-2018 stands dismissed accordingly.

11.10.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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