

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

FAO No. 5712 of 2018

DATE OF DECISION :- November 17, 2022

Smt. Seema Devi and others

...Appellants

Versus

Deepak and others

...Respondents

FAO No. 6126 of 2018

Smt. Lalita and others

...Appellants

Versus

Deepak and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. B.K. Bagri, Advocate for the appellants
in FAO No. 5712 of 2018.

Mr. Satish Jain, Advocate
for respondent No. 3-Insurance Company.

Mr. Amit Kaith, Advocate for respondents No. 1 and 2.

My this order shall dispose of two appeals bearing FAO-5712-
2018 filed by Smt. Seema Devi and others and FAO-6126-2018 filed by Smt.
Lalita and others.

Briefly stated the facts of the case are that on account of death of
Krishan Kumar, aged about 42 years and Rajender Singh, aged about 38 years
in a motor vehicular accident which took place on 19.8.2015 at about 10.50
P.M, statedly on account of rash and negligent driving of Truck bearing
registration No. HR-63-B-5097 by respondent No. 1 Deepak, legal

representatives of both the deceased i.e. Smt. Seema Devi, aged about 36 years, widow, Amit, aged about 20 years son and Smt. Geeta Devi, aged about 60 years, mother of Krishan Kumar and Smt. Lalita, aged about 35 years, widow, Lokesh, aged about 11 years, Mahesh, aged about 10 years both minor sons, Ramgiri, aged about 65 years, mother, Hari Singh, aged about 68 years, father of Rajender have brought separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 against Deepak, Driver, Shakti Singh, owner and United India Insurance Company Limited, Rewari, insurer of the truck in question.

Notices were issued to the respondents in both the claim petitions, who had put in appearance through counsel filing written statements contesting the claim petitions. Issues on merits were framed in the claim petitions. It may be mentioned that one more person namely Baljeet Singh had also expired in the same accident and his LRs namely Smt. Sangeeta Devi and others had also filed an appeal against driver, owner and Insurance Company of the Truck in question. All the three claim petitions were consolidated having arisen out of the same incident and were decided vide a single Award by Motor Accident Claims Tribunal, Rewari on 11.1.2018. In terms of that Award all the three claim petitions were accepted.

With regard to claim petition filed by Smt. Seema Devi and others on account of death of Krishan Kumar, compensation of Rs.12,68,512/- with interest at the rate of 7.5% per annum was awarded whereas claim petition filed by claimants Smt. Lalita and others on account of death of Rajender, compensation of Rs.15,14,500/- was granted with interest at the rate of 7.5% per annum. Compensation was also awarded to the claimants with regard to

death of the third deceased Baljeet Singh, however, they have not preferred any appeal before this Court. The liability to pay this amount was held to be jointly and severally by all the three respondents.

Finding the compensation granted to be on lower side, legal representatives of Krishan Kumar namely Smt. Seema Devi and others as well as Rajender Singh namely Smt. Lalita and others have approached this Court by way of filing separate appeals. Notices of those appeals were given to the respondents. Respondents have appeared through counsel.

I have heard learned counsel for the appellants and learned counsel for respondents besides going through the record.

FAO No. 5712 of 2018

Firstly taking up appeal filed by Smt. Seema Devi and others, learned counsel for the appellants has contended that deceased Krishan Kumar, aged about 42 years was a Dairy farmer and an agriculturist, earning Rs.20,000/- per month. However, the Tribunal took his income to be Rs.10,700/- per month, which is on lower side and it should be enhanced. Learned counsel for the Insurance Company has opposed the contentions considering that the income so taken does not call for any enhancement.

After hearing learned counsel for the parties, I find that considering the evidence available on record, income taken is adequate and reasonable and does not call for any increase. However, the other contention put forward by learned counsel for the appellants that no addition has been made towards future prospects and the compensation under Head loss of consortium is to be granted to all the claimants and not only widow of the deceased, in view of judgment by the Apex Court “*Magma General*

Insurance Co. Ltd. Versus Nanu Ram Alias Chuhru Ram and Others 2018

(4) R.C.R. (Civil) 333” has got force and even learned counsel for the Insurance Company could not refute that contention.

In the case of Smt. Seema Devi and others, considering the age of the deceased to be 42 years, in terms of judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009***' addition of 25% is to be made in the monthly income of deceased towards future prospects. Doing that the addition to be made in monthly income is worked out to Rs.2675/-. The total come out to Rs.13,375/-. Considering the number of dependent family members, deduction of 1/3rd is to be made towards personal expenses of the deceased. Doing that the residue income comes out to Rs.8917/- per month which is to be taken as dependency of the claimants per month. The annul dependency comes out to $8917 \times 12 =$ Rs.1,07,004/- The tribunal has rightly used multiplier of 14. Doing that the compensation come out to $1,07,004 \times 14 =$ Rs.1498056/-.

Since the date of death in this case is 19.8.2015, more than three years have elapsed therefrom, the compensation under the Heads loss of consortium, funeral expenses and loss of estate are Rs.40,000/-, 15000/- and Rs.15,000/-respectively is to be increased by 10%, which come out to Rs.44,000/-, Rs. 16,500/-, and 16,500/- respectively in terms of judgment '***National Insurance Company Limited Versus Pranay Sethi and Others***' (supra).

There are three claimants in this case. Therefore, each of them is entitled to Rs.44,000/- on account of loss of consortium, which is worked out to $44000 \times 3 =$ 1,32,000/-. The total compensation is thus worked out to Rs.16,63,056/-. The compensation awarded by the Tribunal is Rs.12,68,512/-.

In that way the same is enhanced by Rs.3,94,544/- (16,63,056 -12,68,512).

The claimants would be entitled to get interest at the rate of 7.5% per annum on the enhanced compensation from the date of filing of claim petition till actual realization, the liability of all the three respondents to pay the amount being join and several. The apportionment would also remain in the same ratio as directed by the Tribunal. Though the amount would get increased proportionately.

FAO No. 6126 of 2018

In the claim petition filed by Smt. Lalita and others the deceased in this case was aged about 38 years and his monthly income as driver was rightly taken to be Rs.10,700/- which cannot be said to be on lower side, though learned counsel for the appellant has argued in that regard. Further more in view of detailed discussion above, addition of 40% is required to be made towards future prospects. Doing that the amount comes out to Rs.14,980/-(10,700 +4280). Considering the number of dependent family members, deduction of 1/4rd is to be made towards personal expenses. Doing that the dependency amount comes out to Rs.11235/- per month. The annual dependency come out to Rs.11235 x 12 = Rs.1,34,820/-. The tribunal has rightly used multiplier of 15. Doing that the compensation comes out to 1,34,820 x 15 = Rs.20,22,300/-. The compensation under the Head loss of consortium, funeral expenses and loss of estate are Rs.40,000/-, 15000/- and Rs.15,000/-respectively which are to be increased by 10%, which come out to Rs.44,000/-, Rs. 16,500/-, and 16,500/- in terms of judgment '***National Insurance Company Limited Versus Pranay Sethi and Others'*** (supra).

There are five claimants in this case. Therefore, each of them is entitled to Rs.44,000/- on account of loss of consortium which is worked out to

44000 x 5=Rs.2,20,000/-. The total compensation is thus worked out to Rs.22,75,300/-. The compensation awarded by the Tribunal is 15,14,500/-. In that way the same is enhanced by Rs.7,60,800/- (22,75,300- 15,14,500).

The claimants would be entitled to get interest at the rate of 7.5% per annum on the enhanced compensation from the date of filing of claim petition till actual realization. The liability of all the three respondents to pay the amount being join and several. The apportionment would also remain in the same ratio as directed by the Tribunal, though the amount would get increased proportionately.

With such modification, both the appeals are allowed with costs.

(H.S. MADAAN)
JUDGE

November 17, 2022

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No