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FAO No. 2384 of 2016 (O&M)
DATE OF DECISION :- December 09, 2022

Versus

FAO No. 2385 of 2016 (O&M)

Versus

FAO No. 2386 of 2016 (O&M)

Versus

FAO No. 2392 of 2016 (O&M)

Versus

PARVINDER SINGH
2022.12.19 16:25
I attest to the accuracy and
authenticity of this document

FAO No. 2384 of 2016 (O&M), FAO No. 2385 of 2016 (O&M), FAO No. 2386 of 2016 (O&M), FAO No. 2392 of 2016 (O&M), FAO No. 2399 of 2016 (O&M), FAO No. 2400 of 2016 (O&M), FAO No. 2401 of 2016 (O&M) and FAO No. 2402 of 2016 (O&M).

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FAO No. 2399 of 2016 (O&M)

National Insurance Company Limited ...Appellant

Versus

Harjit Kaur and others ...Respondents

FAO No. 2400 of 2016 (O&M)

National Insurance Company Limited ...Appellant

Versus

Harjit Kaur and others ...Respondents

FAO No. 2401 of 2016 (O&M)

National Insurance Company Limited ...Appellant

Versus

Harjit Kaur and others ...Respondents

FAO No. 2402 of 2016 (O&M)

National Insurance Company Limited ...Appellant

Versus

Sandeep Singh and others ...Respondents

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

Present:- Mr. Paul S. Saini, Advocate for the appellant.

Mr. Sushil Saini, Advocate for the claimants-respondents.

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By this judgment, I propose to dispose of eight appeals bearing FAO-2384-2016, FAO-2385-2016, FAO-2399-2016, & FAO-2400-2016, FAO-2401-2016 filed by National Insurance Company Limited against Harjit Kaur and others, FAO-2386-2016 & FAO-2402-2016 filed by National Insurance Company Limited against Sandeep Singh and others and FAO-2392-2016 filed by National Insurance Company Limited against Jaspal Kaur and others.

Briefly stated facts of the case are that on 11.11.2014 Buta Singh along with his wife Benty Kaur, his daughter Navpreet Kaur, his sons Gurpreet Singh and Jashandeep Singh, his brother Amarjit Singh @ Roor Singh, wife of his brother Paramjit Kaur and son of his brother Harjit Singh were travelling in a Car bearing registration No. PB-29-E-1334, which was being driven by Buta Singh. At about 5.00 A.M, when they reached in the area of Village Ramgarh. Police Station Bahadur, District Barnala, then a Truck bearing registration No. RJ-13-GA-4916 (hereinafter referred to as offending vehicle) being driven in a rash and negligent manner by Balkar Singh came from opposite side and struck against their Car resulting in the death of all occupants of Car on the spot. Formal F.I.R regarding the accident was registered.

The legal heirs of the deceased had brought separate claim petitions under the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as the Act) for grant of compensation. With regard to death of Gurpreet Singh, Jashandeep Singh sons of Buta Singh and Navreet Kaur daughter of Boota Singh, Harjit Kaur their Paternal Aunt (Bua), with regard to death of Boota Singh son of Inder Singh and her wife Benty Kaur, his married sister Harjit Kaur, with regard to death of Paramjit Kaur wife of Amarjit Singh

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and Amarjit Singh @ Roor Singh himself, his legal representatives namely sons Sandeep Singh and Sarwan Singh, daughters Sukhpreet Kaur and Manpreet Kaur and with regard to death of Harjit Singh his legal representatives namely his widow Smt. Jaspal Kaur, minor daughter Prabhjot Kaur and minor son Ekam Singh had filed the claim petitions. They impleaded Balkar Singh, driver, Nazia, owner and National Insurance Company Limited Tarn Taran, insurer of the offending vehicle as respondents.

FAO No. 2384 of 2016, FAO No. 2400 of 2016 and FAO No. 2401 of 2016

On account of death of Gurpreet Singh son of Boota Singh, aged about 10 years, a student, Jashandeep Singh, son aged about 6 years, a student and Navreet Kaur (daughter) aged about 8 years, claimant Harjit Kaur Paternal Aunt (Bua) of the deceased had brought claim petitions under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act).

After contest, the claim petitions were accepted and compensation of Rs. 5 lakhs each was awarded to the claimant(s) payable by respondent No. 3 Insurance Company in all the cases.

Respondent No. 3 Insurance Company feeling aggrieved by the said Award has approached this Court by way of filing the above appeals, notice of which was given to the claimants respondents.

I have heard learned counsel for the appellant and learned counsel for the respondents.

The first submission made by learned counsel for the appellant Insurance Company is that Harjit Kaur being paternal aunt of the deceased, had no right to file the claim petitions and compensation was wrongly awarded to her. Whereas learned counsel for appearing for claimants respondents has

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controverted this argument stating that in the road side accident in which the entire family had perished, claimant Harjit Kaur being paternal aunt (Bua), a very close relative, had every right to file the claim petition since for adjudication of such type of claim the only thing is to be seen as to whether the claimant had some sort of financial dependence upon the deceased and in this case the deceased after growing up would have rendered financial assistance to the claimant, from time to time, as per custom prevalent in the society. Therefore, Harjit Kaur had a right to file the claim petitions and no fault can be found with the Award passed by the Motor Accident Claims Tribunal, Tarn Taran granting compensation to her, when all the other close relatives of deceased namely their parents and siblings had also lost lives in that very accident.

Learned counsel for the claimant has referred to judgment N. Jayasree & Ors. Versus Cholamandalam MS General Insurance Company Ltd. 2021(4) R.C.R. (Civil) 642 wherein mother-in-law of the deceased was held to be dependent and legal representatives under motor accident claim petition.

After hearing the rival submissions, I am of the considered view that claimant Harjit Kaur had a right to file the claim petition and the Tribunal had rightly granted compensation to her.

The next argument advanced by learned counsel for the appellant Insurance Company was that the Tribunal exceeded its limit in granting compensation of Rs. 5 lakhs to the claimant, when as per structured formula under Section 163A, the compensation which could be granted was on very lower side. However, learned counsel representing the claimant respondent

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placing reliance upon judgment '*Karvan Ansari alias Kurvan Ali and another versus Shyam Kishore Murmu and another 2022(1) R.C.R. Civil 165*' submitted that the notional income of the deceased should be taken on a higher side. In the circumstances of the case the deceased while growing up after receiving good education would have settled down in life earning a handsome amount. In the judgment referred to by learned counsel for the claimant respondent in para No. 14, it has been mentioned that despite repeated directions issued by the Apex Court Schedule-II has not been amended, therefore, fixing notional income at Rs.15,000/- per month for non earning member is not just and reasonable. In that way notional income of deceased was taken to be Rs.25,000/- per month.

However, during the course of arguments learned counsel for the respondent claimant has further stated in terms of Section 164 of the Act, the owner of the motor vehicle or the authorized insurer shall be liable to pay, in the case of death or grievous hurt, due to any accident arising out of the use of the motor vehicle, a compensation of a sum of Rs.5 lacs in case of death or of Rs. 2.5 lacs in case of grievous hurt to the legal heirs or to the victim, as the case may be. He further stated that compensation of sum of Rs.5 lakhs would be paid in case of death without making reference to the income, age or other factors of the deceased. Learned counsel appearing for the appellant in all fairness has admitted this legal position.

It being so, there is no reason to interfere with the impugned Award and to reduce the compensation awarded. The appeals are doomed for failure and thus appeals bearing FAO No. 2384 of 2016, FAO No. 2400 of 2016 and FAO No. 2401 of 2016 are dismissed accordingly.

FAO No. 2384 of 2016 (O&M), FAO No. 2385 of 2016 (O&M), FAO No. 2386 of 2016 (O&M), FAO No. 2392 of 2016 (O&M), FAO No. 2399 of 2016 (O&M), FAO No. 2400 of 2016 (O&M), FAO No. 2401 of 2016 (O&M) and FAO No. 2402 of 2016 (O&M).

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FAO No. 2385 of 2016

On account of death of Boota Singh son of Inder Singh in a motor vehicular accident, statedly aged about 45 years, self employed, his married sister Harjit Kaur had brought a claim petition under Section 166 of the Act.

After contest, the Tribunal vide Award dated 2.9.2015 awarded compensation of Rs.10,92,912.40/-. The appellant Insurance Company feeling aggrieved that the compensation awarded is on higher side has approached this Court by way of filing the present appeal.

Learned counsel for the appellant has argued that the Tribunal had taken income of the deceased to be Rs.6647.75/- (round off to Rs.6648/-) per month treating him as unskilled worker, for which the prevalent minimum wages were as such in terms of the notification issued by Government of Punjab discussed in para No. 20 of the Award. However, the Tribunal fell in error in awarding 30% of the amount towards future prospects when in terms of judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' when the deceased was aged about years 40-50 years addition of 25% would be made and further deduction was made to the extent of 1/3rd instead of one half and under conventional Heads compensation of Rs.1,25,000/- has been granted which should have been Rs.70,000/- as per settled law.

Learned counsel for the claimants respondents submitted that as far as the submission with regard to addition towards future prospects to the extent of permissible 25% is concerned the same cannot be disputed. Keeping in view the fact that claimant is married sister of the deceased the submission made by learned counsel for the appellant that deduction should be one half

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instead of 1/3rd appears to have force. In that way the annual income of the deceased after adding future prospects to the extent of 25% comes out to Rs.99,720/-. Deducting 50% towards personal and living expenses the annual dependency of claimant comes out to Rs.49,860/-. The multiplier of 14 has rightly been applied. The total dependency thus comes out to Rs.6,98,040/- Granting Rs.15,000/- under the Head loss of Estate and Rs.15,000/- towards funeral expenses and Rs.40,000/- on account of loss of consortium, the total compensation comes out to Rs.7,68,040/-. The compensation awarded by the Tribunal is Rs.10,92,912.40/- Therefore, the same calls for reduction. The impugned Award is modified and compensation of Rs.7,68,040/- is awarded to the claimants payable by all the respondents jointly and severally with interest at the rate of 6% per annum. The other terms and conditions shall remain the same.

The appeal is allowed partly.

FAO No. 2399 of 2016

On account of death of Benty Kaur wife of Boota Singh, aged about 28 years, a self employed female, claimant Harjit Kaur being sister-in-law of the deceased had brought a claim petition under Section 163-A of the Act.

Since in view of Section 164 of the Act discussed in detail earlier irrespective of the other factors compensation of Rs.5 lakhs is to be awarded in case of death of a person in a motor vehicular accident and compensation awarded by the Tribunal is on the higher side. The same is reduced to Rs.5 lakhs from Rs.6,29,000/- with other terms and conditions remaining intact as give in the original Award.

FAO No. 2384 of 2016 (O&M), FAO No. 2385 of 2016 (O&M), FAO No. 2386 of 2016 (O&M), FAO No. 2392 of 2016 (O&M), FAO No. 2399 of 2016 (O&M), FAO No. 2400 of 2016 (O&M), FAO No. 2401 of 2016 (O&M) and FAO No. 2402 of 2016 (O&M).

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The appeal is allowed partly.

FAO No. 2386 of 2016

On account of death of one Paramjit Kaur wife of Amarjit Singh, aged about 50 years statedly employed as Anganwari worker, earning Rs.12,000/- per month, legal representatives of deceased namely sons Sandeep Singh and Sarwan Singh, daughters Sukhpreet Kaur and Manpreet Kaur had brought a claim petition under Section 166 of the Act.

Vide Award dated 2.9.2015 the claim petition was accepted and compensation of Rs.5,93,000/- with interest and cost was awarded to the claimants payable by the Insurance Company.

The Insurance Company felt aggrieved by the Award since according to it major children of the deceased who were married were not entitled to get any compensation on account of death of their mother in the road side accident. For that reason they had filed the present appeal, notice of which was given to the claimants respondents, who have put in appearance through counsel.

Learned counsel for the respondents has placed reliance upon judgment '*National Insurance Company Ltd. Vs. Birender in Civil Appeal No. 242243 of 2020*' wherein several questions were formulated by the Apex Court which are reproduced hereunder :-

- i) Whether the major sons of the deceased who are married and gainfully employed or earning, can claim compensation under the Motor Vehicles Act, 1988 (for short, 'the Act')?
- ii) Whether such legal representatives are entitled only for compensation under the conventional heads?
- iii) Whether the amount receivable by the legal

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representatives of the deceased under the 2006 Rules is required to be deducted as a whole or only portion thereof?

The relevant question concerning this case is No. (i). This question was answered by the Apex Court in para No. 15 of the judgment which are in ready reference is reproduced as under :-

“It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow 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 and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meager income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

That settles the controversy and there is no doubt left in the mind that legal representatives of the deceased which include major married and earning sons of deceased and major married daughters also, are entitled to apply for compensation under Section 166 of the Motor Vehicles Act, 1988.

This judgment could not be distinguished by learned counsel for the appellant

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on any point. He could not refer to any such judgment of the Apex Court later on where a contrary view might have taken.

Under the circumstances, the impugned Award cannot be condemned for the ground taken by the appellant Insurance Company in the appeal. No other submissions was made on behalf of the appellant Insurance Company. Therefore, the appeal is doomed for failure and is dismissed.

FAO No. 2402 of 2016

On account of death of one Amarjit Singh alias Roor Singh, aged about 60 years statedly self employed, earning Rs.15,000/- per month, legal representatives of deceased namely sons Sandeep Singh and Sarwan Singh, daughters Sukhpreet Kaur and Manpreet Kaur had brought a claim petition under Section 166 of the Act.

Vide Award dated 2.9.2015 the claim petition was accepted and compensation of Rs.7,44,237.89/- with interest and cost was awarded to the claimants payable by the Insurance Company.

The Insurance Company felt aggrieved by the Award since according to it major children of the decades who were married were not entitled to get any compensation on account of death of their mother in the road side accident. For that reason they had filed the present appeal, notice of which was given to the claimants respondents, who have put in appearance through counsel.

In view of judgment '*National Insurance Company Ltd. Vs. Birender in Civil Appeal No. 242243 of 2020*' discussed in detail earlier no doubt left in the mind that legal representatives of the deceased which include major married and earning sons of deceased and major married daughters also

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are entitled to get for compensation under Section 166 of the Act.

Under the circumstances, the impugned Award cannot be condemned for the ground taken by the appellant Insurance Company in the appeal. No other submissions was made on behalf of the appellant Insurance Company.

Therefore, the appeal is doomed for failure and is dismissed.

FAO No. 2392 of 2016

On account of death of Harjit Singh son of Amarjit Singh alias Roor Singh, aged about 24 years statedly a vegetable and fruit seller earning Rs.15,000/- per month, legal representatives of deceased namely his widow Smt. Jaspal Kaur, minor daughter Prabhjot Kaur and minor son Ekam Singh had brought a claim petition under Section 166 of the Act.

Vide Award dated 2.9.2015, the claim petition was accepted and compensation of Rs.15,60,914/- with interest at the rate of 6% per annum was awarded to the claimants payable by respondent No. 3 Insurance Company.

Respondent No. 3 Insurance Company feeling aggrieved by the said Award has approached this Court by way of filing an appeal. The main grouse of the appellant Insurance Company is that the Tribunal has allowed 50% of monthly income of the deceased towards future prospects when in terms of judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' the addition should be to the extent of 40% of the established income of the deceased. However, learned counsel for the claimants respondents contends that though the Tribunal had awarded 50% of the monthly income of the deceased towards future prospects but then monthly income of the deceased was taken on lower side. i.e. 6647.75

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which as on lower side and that rather calls for enhancement and further more the interest charged is also on lower side since normally interest is charged at the rate of 7.5% per month and taking into view the two factors the additional 10% granted towards future prospects is offset by these two factors.

I find myself in agreement with learned counsel for the claimants respondents and as such I do not see any reason to interfere with the Award and reduce the amount of compensation which is found to be just and reasonable. No other arguments was advanced.

The appeal is without merit and is dismissed.

All the pending civil miscellaneous applications in all the cases shall stand disposed of accordingly.

(H.S. MADAAN)
JUDGE

December 09, 2022
p.singh

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