IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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1. FAO-2405-2018(O&M)
Date of Order: 15.03.2022

THE NEW INDIA ASSURANCE COMPANY LTD.

..Appellant

Versus

NANHKAI AND ORS.

..Respondent

2. FAO-2406-2018(O&M)

THE NEW INDIA ASSURANCE COMPANY LTD.

..Appellant

Versus

KHUMANA AND ORS.

..Respondent

3. FAO-7065-2018(O&M)

KHUMANA AND ORS.

..Appellants

Versus

THE NEW INDIA ASSURANCE COMPANY LTD. AND ORS.

..Respondents

4. FAO-7066-2018(O&M)

NANHKAI AND ORS.

..Appellants

Versus

THE NEW INDIA ASSURANCE COMPANY LTD. AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Gupta, Advocate
for the appellant (in FAO-2405 and 2406 of 2018).
for respondent-Insurance Company
(in FAO-7065 and 7066 of 2018)

Mr. R.S. Longia, Advocate
for the appellants (in FAO-7065 and 7066 of 2018)

for respondent No.1 and 2
(in FAO-2405 and 2406 of 2018)

ANIL KSHETARPAL, J(Oral)

The connected four appeals have come up for disposal. Two appeals have been filed by the Insurance Company with a prayer to reduce the amount of compensation, whereas, the remaining two have been filed by the claimants to enhance the same.

The accident in question is not in dispute.

The learned counsel representing the Insurance Company has submitted as under:-

i. Three persons out of which two have died, were travelling on a motorcycle which is meant for carrying two persons only. He, hence, contends that the driver of the motorcycle (late Sh.Suresh) is liable for contributory negligence.

ii. While assessing the amount of compensation, the Tribunal has ignored the notification issued by the Labour Department under the Minimum Wages Act, 1948, while giving preference to the minimum wages fixed by the Deputy Commissioner. He submits that in the absence of evidence, the Tribunal ought to have relied upon the notification issued by the Labour Department. It is further contended that the Tribunal has erred in awarding the amount under the conventional heads namely loss of consortium, loss of love and affection, transportation and funeral expenses.

Per contra, the learned counsel representing the claimants prays for enhancement of the compensation on the ground that two young boys aged about 19 years each lost their precious life in an automobile accident.

With respect to the first argument of the learned counsel representing the Insurance Company, it may be noted here that the Insurance Company or the owner or the driver have led no evidence to prove that late Sh. Suresh who was driving the motorcycle was also rash and negligent in driving the motorcycle. In the present case, the accident took place when the offending truck driven by Sh. Avtar Singh entered the National Highway from a side road. As per the law, the driver of the truck is required to be more careful before entering the National Highway from a link road. Hence, the findings of the Tribunal with regard to the rash and negligent driving of Sh. Avtar Singh does not require interference. Merely because three persons were travelling on a motorcycle is not sufficient, in the absence of corroborative evidence, to return a finding of negligence on the part of the driver of the motorcycle.

As regards the question of assessment of the income, the Tribunal has assessed the income of the deceased on the basis of minimum wages fixed by the Deputy Commissioner of the District. The accident in question took place on 21.10.2015. The Tribunal has assessed the income at the rate of Rs.8,100/- per month in absence of the documentary evidence to prove the income. The notification issued under the Minimum Wages Act, 1948, is not binding on the Tribunal. Such a notification is only for the purpose of fixing minimum wages as provided under the Minimum Wages Act, 1948. In some cases, it may help the Tribunal to assess the income.

However, the Tribunal while deciding a claim petition is not bound to follow the same. The attention of the Court was not drawn to any statutory provision either in the Motor Vehicles Act, 1988, or the Rules framed thereunder making it mandatory for the Tribunal to follow the notification issued by the Labour Department under the Minimum Wages Act, 1948.

As regards the next argument, the matter is no longer *res integra.*

As per the judgment passed by the Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333*** which has been reiterated by another Division Bench in ***New India Assurance Co. Ltd. vs. Somwati and others, Civil Appeal No.3093 No.2020, decided on 07.09.2020***, and by a three Judge Bench in ***United India Insurance Company Ltd. Vs. Satinder Kaur @ Satwinder Kaur and others, (2020) SCC Online 410,*** in which it has been approved that each parent is entitled to Rs.40,000/- as consortium.

Each parent is entitled to the filial consortium at the rate of Rs.40,000/-. Hence, in the case filed by Smt. Khumana (wife of Sh. Khuman @ Phuman S/o Sh. Chainu) the parents of late Sh. Suresh Kumar are held entitled to filial consortium to the tune of Rs.80,000/- (Rs.40,000/- each) whereas, in the claim petition filed by Smt. Nanhkai (widow of Ram Kumar @ Ram Karan), she is entitled to Rs.40,000/- as spousal consortium.

With regard to the other non-conventional heads, the matter is covered by a judgment passed by the Five Judge Bench in ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC Online SC 1270***.

Thus, the amount in FAO-7065-2018, is re-calculated as under:-

Heads	Amount awarded by the Motor Accidents Claims Tribunal (MACT).	Amount awarded by the High Court
Monthly income	Rs.8,100/-	Rs.8,100/-
Future prospects	40% Rs.8,100 + Rs.3,240/- Rs.11,340/-	40% Rs.8,100 + Rs.3,240/- Rs.11,340/-
Dependency	(½) Rs.5,670/-	(½) Rs.5,670/-
Annual income X Multiplier	Rs.5,670 X 12 X 18 = Rs.12,24,720/-	Rs.5,670 X 12 X 18 = Rs.12,24,720/-
Loss of estate	-NIL-	Rs.15,000/-
Funeral and transportation expenses	Rs.25,000/-	Rs.15,000/-
Parental/Spousal consortium	Rs.1,00,000/-	Rs.40,000 X 2 = Rs.80,000/-
Total amount awarded (Award)	Rs.13,49,720/-	Rs.13,34,720/-

And the amount in FAO-7066-2018, is recalculated as under:-

Heads	Amount awarded by the Motor Accidents Claims Tribunal (MACT).	Amount awarded by the High Court
Monthly income	Rs.8,100/-	Rs.8,100/-
Future prospects	40% Rs.8,100 + Rs.3,240/- Rs.11,340/-	40% Rs.8,100 + Rs.3,240/- Rs.11,340/-
Dependency	(½) Rs.5,670/-	(½) Rs.5,670/-
Annual income X Multiplier	Rs.5,670 X 12 X 18 = Rs.12,24,720/-	Rs.5,670 X 12 X 18 = Rs.12,24,720/-
Loss of estate	-NIL-	Rs.15,000/-
Funeral and transportation expenses	Rs.25,000/-	Rs.15,000/-

Filial consortium and loss of love and affection	Rs.1,20,000/-	Rs.40,000 X 3 = Rs.1,20,000/-
Total amount awarded (Award)	Rs.13,69,720/-	Rs.13,74,720/-

In FAO-7066-2018, the claimants are awarded the enhanced amount as compensation along with interest at the rate of Rs.9% per annum on account of death of Suresh Kumar from the date of filing the claim petition, till the amount is actually realized.

With all these observations the appeals are disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

March 15th, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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

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