IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 2612/2019(O&M)
Date of decision: 13/03/2023

FAO 2612/2019 (O&M)

Iffco Tokio General Insurance Co. Ltd.
………………Appellant

Vs.

Anita and others

……………….Respondents.

FAO 4504/2019

Anita and others
………………Appellants

Vs.

Karamvir and others

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Nigam K.Bhardwaj, Advocate for the Insu. Co.

Mr. Prashant Singh Chauhan,Advocate for the appellants.

Nidhi Gupta, J.

Vide this order I shall dispose of aforesaid two appeals, the same bearing FAO 2612/2019 - preferred by the Insurance Company; and FAO 4504/2019 - preferred by claimants, both appeals having arisen out of one Award dated 11.3.2019 passed by Motor

Accident Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') passed in MACP 678/2018 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Since the facts, questions of law, and impugned Award in these appeals are common, with the consent of ld. Counsel for the parties, the same are disposed of by this common order. For sake of convenience, parties are being referred to by their status in FAO 2612 of 2019 viz the appeal preferred by the Insurance Company.

The ld. Tribunal on the basis of pleadings and evidence on record concluded that the deceased Suresh Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 3.1.2018 due to rash and negligent driving of Canter bearing registration No. HR-55H-4755 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.7 herein, and owned by respondent no.8 herein. Claimants are widow and two major daughters and two major sons, and father of the deceased - Suresh Kumar.

Ld. Counsel for the Insurance Company assails the Award primarily on the ground of quantum and states that compensation of Rs.12,97,600/-, as awarded by the ld. Tribunal along with interest @ 7.5% per annum from the date of filing of the petition till realization, in the facts and circumstances of the present case, is on the higher side.

It is submitted by the ld. Counsel for the appellant Insurance Company that the ld. Tribunal was in patent error in taking the income of the deceased as Rs.12,400/- per month, in the absence of any evidence to this effect. It is submitted that income as per relevant

Minimum Wage Notification dated 1.1.2018 issued by the State of Haryana ought to have been taken as Rs.7600/- as admissible to an unskilled labourer, or at best could have been taken as Rs.8497.56 (rounded off to Rs.8500/-) per month as admissible to skilled labourer. It is submitted that there is no rationale in taking the income of the deceased as Rs.12,400/- per month, as there is no evidence whatsoever on record to this effect.

It is further submitted that the ld. Tribunal has made deduction of 1/4th towards personal and living expenses, however, keeping in view the fact that deceased was 54 years of age at the time of accident, and claimants are two major sons and two major daughters of the deceased, who cannot be held to be dependent on their father, and as such, deduction of 50% ought to have been made towards personal expenses.

In response it is submitted by the ld. Counsel for the claimants, who are seeking enhancement, that in fact the deceased was earning Rs.25000/- per month from his business of milk supply. It is submitted that however, ld. Tribunal has overlooked vital cogent evidence in this regard while taking the income of the deceased as only Rs.12,400/- per month. It is submitted that a perusal of Ex.P-11 to Ex.P-105, issued by Weigh Bridge (*Dharam Kanta*), which depicted the weight of the vehicle when it was loaded with milk supplied by the deceased, along with bank copies Ex.P-106 to Ex.P-107, irrefutably reflect that the deceased was earning Rs.25000/- per month. It is further submitted that no evidence in rebuttal has been led by the Insurance Company to show that income of the deceased was not as claimed above.

It is submitted that Hon'ble Supreme Court in **S.Kaushnuma Begum and others v New India Assurance Co. Ltd., Law Finder Doc Id # 14812** has held that where no evidence in rebuttal is led by the Insurance Company to falsify income of the deceased, income has to be taken as per the claim. It is further submitted that at the time of evidence even no such suggestion was made by the appellant Insurance Company that evidence led by the claimants was insufficient or incorrect, and therefore, the said plea cannot be raised at this stage.

It is further submitted that nothing has been granted by the ld. Tribunal by way of future prospects, and as deceased was 54 years at the time of his death future prospects @ 10% ought to have been added. It is further submitted that consortium has been given only to the widow of the deceased and nothing has been granted by way of consortium to the other claimants. In support, counsel for the claimants relies upon judgment of the Delhi High Court in **MAC.APP. 361/2013 Kanti Devi and others v New India Assurance Company Ltd.**, decided on 23.9.2022, wherein in para 9 it has been held that "*This Court is of the considered opinion that parental consortium is available to all the children irrespective of the fact that whether they were dependent on the deceased or not*". Ld. Counsel further relies upon judgment of the Hon'ble Supreme Court in case of **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130;**.

It is also submitted that the argument of the ld. Counsel for the appellant Insurance Company that deduction of 50% ought to have been made cannot be accepted as admittedly, the claimants included the widow and aged father of the deceased, as also two sons and two daughters and therefore, a deduction of 50% cannot be made. It is stated that deduction of 1/4th made by the Tribunal towards personal expenses is correct and as per law laid down by the Hon'ble Supreme Court.

It is finally submitted that interest has been awarded @ 7.5% per annum which is on the lower side, and ought to have been awarded @ 9% per annum.

No other argument has been raised on behalf of the parties.

Heard ld. Counsel for the parties.

I will consider each argument raised by the parties as follows:-

As regards income of the deceased it has been pleaded on behalf of the Insurance Company that income ought to have been taken as per relevant Minimum Wage Notification; whereas it has been vehemently argued on behalf of the claimants that apart from the overwhelming oral evidence, approximately 100 slips Ex. P-11 to Ex.P-105 were produced in evidence showing the weight of the vehicle when it was loaded with milk. It has been submitted that therefore, it was proven on record that the deceased was earning Rs. 25,000/- per month.

I do not find merit in the said argument on behalf of the claimants. A perusal of the record of the case shows that the receipts Ex. P-11 to Ex.P-105 issued by the Weigh Bridge (**Dharam Kanta**) only depict the gross weight of the vehicle, and not its tare weight. Thus, the quantity of milk lying in the milk container loaded on the vehicle is not ascertainable. Moreover, no amount is also mentioned in the said receipts. Accordingly, the said evidence is not conclusive in proving the income of the deceased as claimed. In such circumstances keeping in mind the factors for and against, the ld. Tribunal has justly and fairly assessed the notional income of the deceased as Rs.12400/- per month.

Judgment in **S. Kaushnuma Begum's** case (supra) relied upon by the ld. counsel for the claimants is distinguishable as the said case relates to Section 163A of the Act under no fault liability, which is distinguishable from the rule of strict law wherein proof of negligence is not necessary. Moreover, in the present case, for the reasons discussed hereinabove, even evidence led by the claimants themselves, mainly in the form of receipts Ex. P11 to Ex. P105 does not sufficiently prove income of the deceased to be Rs. 25,000/-.

Argument on behalf of the appellant Insurance Company that deduction of 50% ought to have been made is rejected in view of the fact that admittedly, widow and aged father of the deceased are also claimants and therefore, deduction of 1/3rd is required to be made. Further, there is no doubt that future prospects @ 10% is admissible.

As regards argument of the ld. Counsel for the claimants regarding payment of consortium, same is not tenable in view of judgment of the Hon'ble Supreme Court in **New India Assurance Co. Ltd. Versus Vinish Jain and Ors., Law Finder Doc Id # 977386**, wherein it has been categorically held that major children are not dependents on the deceased and are therefore, not entitled to compensation. In the present case admittedly, claimants no. 2 to 5/ appellants no. 2 to 5, are major daughters and sons of the deceased, being aged 31, 28, 27 and 25 years respectively. Even no evidence whatsoever, has been led on behalf of the claimants to prove that the said claimants were dependent on the deceased. Even this Court in **Harpal Kaur and others v Sita Ram and others, Law Finder Doc Id # 921104; Narender Nayyar v Sheodan Singh and others, Law Finder Doc Id # 626136;** and **Sajna Devi and others v Vijender Kumar and others, Law Finder Doc Id # 921100,** has held that major children are not entitled to consortium.

Accordingly, compensation admissible to claimants is reworked as under:-

S.No.	Head	Compensation awarded by the Tribunal (in Rupees)	Compensation reworked in this appeal (in Rupees)
1.	Income	12400	12400
2.	Future prospects @ 10%	Nil	1240
3	Monthly income	12400	13640
4.	Deduction	3100	4547
5	Monthly dependency	9300	9093
6	Multiplier	11	11
7.	Total dependency	12,27,600	12,00,276
8.	Consortium	40,000	40000 (to widow)
9.	Filial consortium to claimant no.6- Father of the deceased	Nil	40000
10	Funeral expenses	15000	15000
11	Loss of Estate	15000	15000
	Total	12,97,600	13,10,276
12	Interest	7.5% p.a.	7.5% p.a.

Ratio of apportionment and manner of disbursement of enhanced compensation shall remain unchanged. Claimants shall be entitled to interest @ 7.5% on enhanced compensation from date of filing claim petition till realization.

In view of the above, the appeal filed by Insurance Company bearing FAO No.2612 of 2019 is dismissed; while the appeal filed by claimants bearing FAO No.4504 of 2019 is partly allowed in the manner described above.

A copy of this order be placed on the file of connected appeal bearing FAO 4504/2019.

13/03/2023 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**