IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

236

Date of decision: 04.05.2023

FAO-3739-2019 (O&M)

Kamlesh & Others

...Appellant(s)

Vs.

Dhanna Singh & Another

...Respondent(s)

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FAO-1970-2019 (O&M)

United India Insurance Co. Ltd.

...Appellant(s)

Vs.

Kamlesh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Jimmy Singla, Advocate
for the appellants (in FAO-3739-2019)

Mr. Saurav Bhatia, Advocate
for respondent No.1 (in FAO-3739-2019)

Mr. Lalit Garg, Advocate
for respondent No.2 (in FAO-3739-2019)

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<u>NIDHI GUPTA, J.</u>

Mr. Saurav Bhatia, Advocate puts in appearance on behalf of respondent No.1/driver and owner of offending vehicle (in FAO-3739-2019) and files Vakalatnama which is taken on record.

2. By this common order, I shall dispose of two cross appeals same being FAO-3739-2019 filed by the claimants; and FAO-1970-2019 filed by the Insurance Company. Both the appeals are being

disposed of by common order as facts, arguments, and questions of law involved in both the Appeals are identical, and as both the appeals arise from one Award dated 22.11.2018 passed by Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as "the learned Tribunal") in MACP Reg. No.232 of 27.11.2017, filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

3. For the sake of convenience, parties are being referred to by their litigative status before the learned Tribunal.

4. Vide the impugned Award dated 22.11.2018, learned Tribunal has awarded compensation of Rs.14,26,000/- to the claimants along with interest @ 9% per annum from the date of filing the petition till realisation. Learned Tribunal awarded compensation as above on account of death of 18-year-old Vikram Singh @ Vikram Ram. The learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Vikram Singh @ Vikram Ram had died due to injuries suffered by him in a motor vehicular accident that took place on 09.11.2017 due to rash and negligent driving of truck bearing registration No.HR-57-4897 (hereinafter referred to as "the offending vehicle") being driven and owned by respondent No.1 and insured by respondent No.2/appellant in FAO-1970-2019 - filed by the Insurance Company. The three claimants are the parents and sister of deceased-Vikram Singh @ Vikram Ram.

5. Learned counsel for the claimants seeks enhancement of compensation inter alia on the grounds:

a) that nothing has been granted by the learned Tribunal towards future prospects. It is submitted that deceased was 18 years of age at the time of accident and therefore, an addition of 40% ought to have been made towards future prospects;

b) that learned Tribunal has granted interest @ 9% per annum only whereas the same should be 12% per annum;

c) that income of the deceased has been taken on lower side as Rs.9,000/- per month. It is submitted that deceased was self-employed/labourer and earning Rs.15,000/- per month;

d) that it has been held by three-Judge Bench of Hon'ble Supreme Court in **Kirit & Another Vs. Oriental Insurance Co. Ltd. Law Finder Doc ID # 1795020** that:

> *"12. Second, although it is correct that the claimants have been unable to produce any document evidencing Vinod's income, nor have they established his employment as a teacher; but that doesn't justify adoption of the lowest-tier of minimum wage while computing his income. From the statement of witnesses, documentary evidence-on-record and circumstances of the accident, it is apparent that Vinod was comparatively more educationally qualified and skilled. Further, he maintained a reasonable standard of living for his family as evidenced by his use of a motorcycle for commuting. Preserving the existing standard of living of a deceased's family is a fundamental endeavour of motor accident compensation law. Thus, at the very least, the minimum wage of Rs.6197 as applicable to skilled workers during April 2014 in the State of Haryana ought to be applied in his case."*

6. It is submitted that relying on the aforementioned case, in the present case also, though claimants were unable to prove monthly income of the deceased, however, it was proven on record that deceased maintained a reasonable standard of living since, deceased herein also possessed a motorcycle. It is stated that it is noticed in the impugned Award in Para 10 that at the time of accident, deceased was driving the motorcycle along with pillion rider Sunny Kumar @ Sunny. It is submitted that accordingly, income of the deceased should at least be maintained as Rs.9,000/- per month as assessed by learned Tribunal.

7. On the other hand learned counsel for the Insurance Company inter alia, submits:

a) that income of the deceased has been taken on higher side as Rs.9,000/- per month. It is submitted that as per relevant Minimum Wage notification, minimum wage for an unskilled labourer was Rs.7,624/- whereas learned Tribunal has taken income of the deceased as Rs.9,000/-;

b) that learned Tribunal has granted huge sum of Rs.1,30,000/- under conventional heads whereas the same should be Rs.77,000/- as per law;

c) that learned Tribunal has made deduction of 1/3rd towards personal expenses whereas in view of the fact that deceased was a bachelor at the time of death, deduction of 50% ought to have been made.

d) It is very fairly conceded that addition of 40% ought to have been made towards future prospects.

8. No other argument is raised on behalf of the parties.

9. I have heard learned counsel for the parties.

10. Perusal of record of the case shows that age of the deceased was determined to be 18 years on the basis of Aadhaar card (Exhibit C5). Though, it was the pleaded case of the appellants that deceased was a mason and earning Rs.15,000/- per month, however, except for the bald statement of claimant No.3, no other evidence was led by the claimants to prove the alleged avocation and/or income of the deceased as claimed. Accordingly, learned Tribunal took his income as Rs.9,000/- per month as admissible to a daily wage labourer. I find no error in the same as it is undisputed that the deceased maintained a 'reasonable standard of living' as per judgment of Hon'ble Supreme Court in **Kirit (supra)**. Learned Tribunal correctly applied multiplier of 18.

11. However, the three corrections that are required to be made in the present Award are that, in accordance with law laid down by Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) 16 SCC 680,** in view of the fact that deceased was 18 years of age at time of death, an addition of 40% has to be made towards future prospects.

12. Further as per latest judgment of Hon'ble Supreme Court in **Shri Ram General Insurance Co. Ltd. Vs. Bhagat Singh Rawat & Others Civil Appeal Nos.2410-2412/2023,** reiterated by the Hon'ble

Supreme Court in **Mehmooda Bee & Others Vs. National Insurance Co. Ltd. (@ SLP (C) No.16767 of 2022)** and **Bebi Giri Vs. National Insurance Co. Ltd. Civil Appeal No.6551 of 2022,** a total sum of Rs.77,000/- only is admissible under conventional heads. Learned counsel for the claimants has not been able to dispute this position in law.

13. Moreover, it remains undisputed on record that the deceased was a bachelor at time of death, and therefore, as per law a deduction of 50% is required to be made. The unmarried sister of the deceased cannot be considered a dependent on the deceased as she will be dependent on her father (claimant No.3).

14. Accordingly, compensation payable to the claimants, is reworked as follows in tabular form:

HEADS	**AWARDED BY MACT**	**AWARDED BY THIS COURT**
Income	Rs.9,000/- per month	Rs.9,000/- per month
Annual income	Rs.9,000/- x 12 = Rs.1,08,000/-	Rs.9,000/- x 12 = Rs.1,08,000/-
Future prospects	NIL	(40%) Rs.1,08,000/- + Rs.43,200/- = Rs.1,51,200/-
Deduction	(1/3rd) Rs.1,08,000/- - Rs.36,000/- = Rs.72,000/-	(50%) Rs.1,51,200/- - Rs.75,600/- = Rs.75,600/-
Multiplier	(18) Rs.72,000/- x 18 = Rs.12,96,000/-	(18) Rs.75,600/- x 18 = Rs.13,60,800/-
Conventional heads	1,30,000/-	Rs.77,000/-
Total	Rs.14,26,000/-	Rs.14,37,800/-
Enhanced by	Rs.11,800/-	

15. Ratio of apportionment, and mode of disbursement of compensation as determined by the learned Tribunal is maintained. Interest @ 9% as granted by the learned Tribunal is maintained. In view of the above discussion, both the appeals are **partly allowed** as above.

16. Pending application(s) if any also stand(s) disposed of.

04.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

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