

FAO-3632-2015 (O&M)

Date of Decision :22.03.2023

Shri Ram General Insurance Company Ltd. ...Appellant

versus

Shikla and othersRespondents

FAO-4445-2016 (O&M)

Date of Decision :22.03.2023

Shikla alias Shakila and others ...Appellants

versus

Parveen and othersRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Rajbir Singh, Advocate for the appellant in FAO-3632-2015 and respondent No.3 in FAO-4445-2016.

Mr. Ashok Khuber, Advocate for the appellants in FAO-4445-2016 and for claimants-respondents in FAO-3632-2015.

B.S. Walia, J. (Oral)**FAO-3632-2015** and
FAO-4445-2016

1. This order shall decide FAO-3632-2015 and FAO-4445-2016, as the same arise out of the same award.

2. Prayer in the appeal (FAO-3632-2015) filed by the Insurance Company is for reduction of compensation of Rs.16,72,645/- awarded to the respondents/claimants i.e. widow and four minor children of deceased Yousaf alias Maamdin along with interest @ 9% per annum, by the

learned Motor Accident Claims Tribunal, Kurukshetra, while prayer in FAO-4445-2016, is for enhancement of compensation of Rs.16,72,645/-.

3. Learned counsel for the insurance company contends that although the accident and death of the deceased took place on 12.12.2013, yet the learned Tribunal wrongly assessed the income of the deceased as Rs.6655/- per month, on the basis of notification issued under the Minimum Wages Act dated 19.10.1989, whereas as per the relevant notification issued under the Minimum Wages Act in the State of Haryana for the period December, 2013, the minimum wages of an unskilled labourer was Rs.5547.10/-. Learned counsel further contends that as per paragraph 61 (iii) of the decision of Hon'ble the Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others 2017 (4) RCR (Civil) 1009** 40% of the income of the deceased ought to have been taken into account for the purposes of grant of future prospects instead of 50 %, besides Rs.2 Lakh awarded on account of loss of love and affection are not admissible in view of the decision of Hon'ble the Supreme Court in Satinder Kaur @ Satwinder Kaur vs. United India Insurance Co. Ltd. Law Finder Doc Id # 1729112. Learned counsel further contends that Rs.1,00,000/- awarded on account of loss of consortium to the widow and Rs.25,000/- awarded on account of funeral expenses are also liable to be scaled down in view of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

4. Per contra, learned counsel for the appellants in FAO-4445-2016 contends that the compensation awarded is liable to be enhanced by taking into account the income of the deceased @ Rs.20,000/- per month as against Rs.6655/- taken into account by the Tribunal in view of the

having income of Rs.20,000/- per month. Learned counsel further contends that each of the four children of the deceased are entitled to be awarded Rs.44,000/- each on account of loss of parental consortium. However, learned counsel has not been able to controvert the stand of the appellant in FAO-3632-2015 that as per the notification under the Minimum Wages Act and as applicable in the State of Haryana for December, 2013, emoluments payable to an unskilled worker were Rs.5547.10/- per month. He has also not been able to controvert that as per paragraph 61 (iii) of the decision in Pranay Sethi's case (supra), in case of self-employed person below the age of 40 years, 40% of the income of the deceased is to be taken into account for the purpose of working out future prospects for award of compensation. Learned counsel has also not been able to controvert the stand of the learned counsel for the appellant in FAO-3632-2015 that no amount is payable on account of loss of love and affection in view of the decision of Hon'ble the Supreme Court in Satwinder Kaur's case (supra) or for that matter that only Rs.44,000/- is payable on account of loss of spousal consortium besides Rs.16,500/- is payable on account of funeral expenses and like amount on account of loss of estate in view of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra) and Magma General Insurance Co. Ltd.'s case (supra).

5. Learned counsel for the appellant/Insurance Company further contends that no evidence whatsoever was led by the appellants/claimants in FAO-4445-2016 to show that the deceased was a tailor or that he was running a grocery shop and that he was earning Rs.20,000/- per month and that in the circumstances, a story was

maximum compensation from the Insurance Company in view of the deceased having a below poverty line ration card (BPL). Learned counsel contends that in the circumstances it is evident that the claim as put forth is totally inflated for extraneous considerations.

6. I have considered the submissions of learned counsel.

7. Admittedly, no proof of the deceased being a tailor or of his running a grocery shop or having income of Rs.20,000/- per month has been adduced by the appellants/claimants in FAO-4445-2016 besides the deceased was issued a below poverty line ration card which has not been denied by the learned counsel for the claimants. Moreover, as per notification issued under the Minimum Wages Act for December, 2013, copy of which, has been produced by learned counsel for the Insurance Company, the minimum wages in case of an unskilled worker was Rs.5547.10/- per month. The same is taken on record. Copy thereof supplied to learned counsel for the appellants/claimants in FAO-4445-2016. As per the decision of Hon'ble the Supreme Court in Satwinder Kaur's case (supra), no amount is payable on account of loss of love and affection, likewise, in view of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra), loss of consortium awarded to the widow is liable to be scaled down to Rs.44,000/- as against Rs.1,00,000/- awarded by the Tribunal while four minor children are entitled to award of loss of parental consortium @ Rs.44,000/- each in view of the decision of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd.'s case (supra). The appellants/claimants in FAO-4445-2016 are also held entitled to Rs.16,500/- on account of loss of estate while Rs.25,000/- awarded on account of funeral expenses are scaled down to Rs.16,500/-

case (supra). Besides in view of paragraph 61 (iii) of the decision of Hon’ble the Supreme Court in Pranay Sethi’s case (supra), only 40% of the income of the deceased is to be taken into account for working out future prospects in view of the deceased being self employed and being 38 years of age.

8. Accordingly, in the light of the position noted above, details of compensation awarded by the learned Tribunal and the compensation assessed by this Court, are as under :-

Sr. No.	Head	Amount assessed by Tribunal in Rupees	Amount assessed by this Court in Rupees
1.	Income of the deceased	Rs.6655/- per month	Rs.5547.10/- per month rounded off to Rs.5547/-
2.	Future prospects	50% of Rs.6655/- = 3327.50 rounded off to Rs.3328/- (Total 6655 + 3328 = Rs.9983/-)	40% of Rs.5547/- = 2219 (Total 5547 + 2219 = Rs.7767/-)
3.	Deduction	1/4 th of Rs. 9983/- = Rs.2496/-	1/4 th of Rs.7766/- = Rs.1942/-
4.	Dependency	9983-2496= 7487	7766-1942= 5824/-
5.	Multiplier applied	15	15
6.	Compensation awarded	7487x12x15= 13,47,660/-	5824x12x15 = 10,48,320
7.	Love and affection	Rs.2,00,000/-	Nil
8.	Loss of Consortium	Rs.1,00,000/-	Rs.44,000/- to each of the appellants in FAO-4445-2016 i.e. 44000x5 =2,20,000/-
9.	Funeral Expenses	Rs.25,000/-	Rs.16,500/-
10.	Loss of Estate	Nil	Rs.16,500/-
11.	Interest	9% per annum	9% per annum
Total		Rs.16,72,645/-	Rs.13,01,320 /-

9. Accordingly, in the light of the position noted above, the appeal filed by the Insurance Company (FAO-3632-2015) is allowed while the appeal filed by the appellants/claimants (FAO-4445-2016) is partly allowed. Award is modified to the extent noted above.

(B.S. Walia)
Judge

22.03.2023
rajesh

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