**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO-652-2016 (O&M)
Reserved on:21.04.2023
Date of Pronouncement:05.05.2023

Roshni Devi & others ... Appellants

Vs.

Ishwar & others ... Respondents

2. FAO-984-2016 (O&M)

Savitri Devi & another ... Appellants

Vs.

Ishwar & others ... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Vivek Suri, Advocate for the appellant(s).

Mr. Punit Jain, Advocate,
for respondent No.3/Insurance Company.

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SUKHVINDER KAUR, J.

This order shall dispose of **FAO-652-2016 (Roshni Devi & others Vs. Ishwar & others)** and **FAO-984-2016 (Savitri Devi & another Vs. Ishwar & others)** as both the appeals have arisen from a common award dated 11.09.2015.

1. The relevant facts are that on 16.05.2014, both the deceased, who were brothers, namely, Sant Ram and Richh Pal were going to Rohtak from their petrol pump situated at village Humayunpur in the Scorpio

vehicle bearing registration No.HR-12U/0166. At about 9:30 PM, when they reached near petrol pump at village Bhallaut, then a Trolla bearing registration No.HR-66/3332 (hereinafter to be referred to as 'the offending vehicle') being driven by its driver-Ishwar at a very high speed and in a rash and negligent manner, came from the wrong side and struck against the said Scorpio vehicle. One Krishan Kumar S/o Sumer Chand, who was following the offending vehicle rescued the injured from the Scorpio and sent them to PGIMS, Rohak for treatment. The doctors of PGIMS, Rohtak declared Richh Pal as dead. Sant Ram sustained serious and grievous multiple injuries on his person and remained under treatment at different hospitals and ultimately, succumbed to the injuries on 18.06.2014 i.e. after about one month of the accident. The driver/respondent No.1 of the offending vehicle fled away from the spot taking the benefit of the crowd. Krishan Kumar S/o Sumer Chand informed the police and made a statement before the police. Accordingly, the FIR bearing No.224, dated 17.05.2014, under Sections 279/337/304-A IPC was got registered at Police Station Sadar Rohak.

2. It has been averred by claimant Roshni Devi & others that the deceased Sant Ram was 47 years of age at the time of his death and earning Rs.80,000/- per month from the petrol pump and agriculture farming. His widow and minor children were dependant upon him and it has been prayed that they may be granted a compensation of Rs.1,20,00,000/-.

It has been averred by claimant Savitri Devi & others that deceased Richh Pal was 60 years of age at the time of his death. The aforesaid petrol pump was owned by his deceased brother Sant Ram and he was employed at the said petrol pump and was earning Rs.15,000/- per month as salary. Besides this, he was also earning Rs.10,000/- per month from agriculture farming. His widow and daughter were dependant upon him. With these averments, they claimed Rs.40,00,000/- as compensation from the respondents.

3. After notice, respondent Nos.1 and 2 appeared (owner and driver respectively) and filed their written statement admitting the factum of the accident and involvement of the offending vehicle in the accident in question but pleaded that it was the driver of the Scorpio vehicle who was at fault for the same. They pleaded that respondent No.1 was driving the offending vehicle at a slow speed and following the traffic rules whereas the Scorpio vehicle was driven at the very high speed in a rash and negligent manner by its driver. So, the driver of the Scorpio vehicle alone was responsible for causing the accident in question.

4. A separate written statement was filed by respondent No.3/ insurance company, denying therein the factum of accident and involvement of the offending vehicle in any such accident and pleaded that if the factum of the accident and involvement of the offending vehicle in the accident in question was proved, then it was deceased Sant Ram who was at fault for the accident. It denied its liability to indemnify the insured on the ground that deceased Sant Ram was not holding a valid and effective license at the time of the alleged accident which was in violation of the terms and conditions of the insurance policy.

5. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

6. After considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal has partly allowed the claim petition bearing MACT Case No.100 of 2014 filed by claimant Roshni Devi & others and awarded a sum of Rs.34,03,082/- as compensation alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till realization.

Learned Tribunal has also allowed the claim petition filed by claimant Savitri & another i.e. MACT Case No.101 of 2014 qua only Savitri Devi and awarded a compensation of Rs.4,61,000/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till realization.

Respondents No.1 to 3 in both the claim petitions were held jointly and severally liable to pay the compensation.

7. Feeling dissatisfied with the award dated 11.09.2015, the appellant-claimants have preferred the instant appeals.

8. I have heard learned counsel for the parties and have also perused the relevant record.

9. Counsel for Roshni Devi etc. in FAO-652- has contended that as per the latest Income Tax Returns, the income of the deceased Sant Ram from all sources was about Rs.7 lakhs per annum but the learned Tribunal has assessed his income to be Rs.2 lakhs per annum, after deducting an amount of Rs.3,30,000/- his annual income from agricultural land and another sum of Rs.1.50 lakhs as per annum income from the petrol pump and after deducting $1/4^{th}$ for personal expenses the dependency has been calculated as Rs.1.50 lakhs per annum. He has contended that the Tribunal has not added any income of the deceased towards future prospects. As the

deceased was aged 48 years at the time of the accident and as such the future prospects were to be added in the income of the deceased. He has argued that deceased remained admitted in hospital from 17.05.2014 to 18.06.2014 and huge amount was spent on his treatment, but nothing has been awarded towards attendant charges or the transportation charges. He has contended that the Tribunal has erred in law, by deducting income from agriculture as well as income from the petrol pump now being received by the claimants, from the income of the deceased by observing that the said petrol pump and agriculture land is now in possession of the appellants, whereas the fact being, that the deceased used to manage the entire family and due to his untimely death the appellants have been hard hit. Earlier this income was growing day by day, which has now been reduced considerably. He has further contended that not a single penny has been awarded to the 5 minor children who have been deprived of love and affection and care of their father. The Tribunal has awarded the interest at the rate of 7.5% per annum whereas it ought to have been atleast 9% per annum and has prayed that the present appeal may be accepted and award of the Tribunal may be modified in the above said terms.

10. Counsel for the appellants-Savitri and others in FAO-984 has contended that the deceased Richh Pal was employed at the petrol pump owned by his deceased brother Sant Ram and was also doing agriculture farming. His total income from all sources was Rs.25,000/- per month but the Tribunal has wrongly taken his income to be Rs.6000/- per month being, the wages of an unskilled labour fixed by the State Government under the minimum Wages Act and after deducting 1/3rd income towards personal

expenses, the monthly dependency of the deceased has been assessed to be Rs.4000/- per month. His age has been considered to be 62 years and multiplier of 7 has been applied. He has contended that the award is highly inadequate and very meagre. Appellant No.2, Poonam has not been awarded any compensation she being the married daughter, whereas she was entitled to compensation under the head of loss of love and affection. He has also contended that the interest has been awarded @ 7.5% per annum, whereas it ought to have been atleast 9% per annum and has prayed that the present appeal may be accepted and award may be modified accordingly.

11. On the other hand, it has been contended by learned counsel for respondent No.3/insurance company that the MACT has rightly assessed the just compensation of Rs.34,03,082/- qua deceased Sant Ram as there was loss of income from business as well as from the agricultural land. Roshni Devi widow of deceased Sant Ram, admitted during her deposition, that the petrol pump is still being run by cousin of Sant Ram and they are earning approximately Rs.1,50,000/- per annum from it and has further deposed that from 22 acres of land they are getting a sum of Rs.3,30,000/- per annum and the entire agriculture land has been mutated in favour of all the claimants. He has contended that admittedly when the claimants are earning a sum of 3,30,000+150000=480000 per annum then the MACT has rightly awarded a sum of Rs.2 lakhs as annual loss and there is no further scope of enhancement in the present appeal. He has also contended that as deceased was 62 years old at the time of his death in the accident then no future prospects are to be added to the income of the deceased. By relying upon **New India Assurance Company Ltd. Vs. Yogesh Devi, 2012 ACJ 702**

and **State of Haryana Vs. Jasbir Kaur, 2003 PLJ 414,** he has contended that in case of agricultural land, the normal rule about the deprivation of income was not applicable, where the agriculture income is the source then the attendant circumstances have to be considered and only loss of managerial as well as loss of minimum wages of labour to manage the agriculture land is to be considered. He has argued that in the present case, the MACT has rightly taken a sum of Rs.2 lakhs as annual loss which include both loss of managerial skills for business as well as for the agriculture. He has contended that the business is still running and the agricultural land is also being looked after and in these circumstances only the amount required for engaging the service of manger is payable to the claimants and not the entire income which was being derived was to be considered. By placing reliance upon **Rani Gupta & others Vs. United India Insurance Co. Ltd. & others, (2009) RCR (Civil) 900**, he has contended that the compensation should be just and it should not be a bonanza or largesse for the claimants. He has contended that though no future prospects are to be added to the income of the deceased Sant Ram, but still if this Court find it just to award the same, then the future prospects are to be granted only upto 25% of income of the deceased, as deceased was approximately 48 years of age at the time of his death.

12. He has contended that the amount of Rs.1,25,000/- granted under the conventional head is also to be reduced to a sum of Rs.70,000/- in the light of the judgment of the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi, 2017(4) RCR (Civil) 1009.** He has contended that the Income Tax Returns of deceased for the previous years

are inconsistent and the business income as well the agriculture figures are irregular and the said Income Tax Returns cannot be considered and relied upon for the purpose of assessment of compensation. Otherwise also the claimants have suffered no loss of agricultural income as well the business income as both of these are still being received by the family.

Qua FAO-984-2016 filed by Savitri Devi & others, he has contended that deceased was 62 years old at the time of his death in the accident and therefore no future prospects are required to be added to the income of the deceased. He has contended that the document Ex.P28 which was relied upon by the claimants, has not been properly proved, in the absence of examination of author of the document. Otherwise also even from the said document it is not proved that income of the deceased was Rs.18,000/- per month and there is no further scope of enhancement in this appeal in the absence of any proof of the claimed income. He has contended that both the appeals filed by the claimants are liable to be dismissed.

13. There is no dispute with regard to the finding on issue No.1 regarding the manner of happening of accident in question as has been alleged by the claimants in which both Sant Ram and Richh Pal had died.

FAO-652-2016:

14. As per the claimants after sustaining injuries in the accident on 16.05.2014, deceased Sant Ram remained under treatment at various hospitals and finally succumbed to the injuries on 18.06.2014. To prove the same, the claimants had examined PW4 Dr. Vinod Malik, Consultant Neuro Surgeon from Sunflag Hospital, Rohtak who has deposed that deceased Sant Ram had been got admitted in that hospital on 17.05.2014 at 4:15 AM with

history of having received injuries in a road side accident. For his head injury he was treated conservatively and he left the hospital on 22.05.2014 against the medical advise. This witness produced the recording pertaining to his treatment as Ex.P12 and also proved the correctness of the hospital bill Ex.P13 vide which Rs.60,600/- were received from the attendants as treatment charges. From Sunflag Hospital, he was taken to Paras Hospital, Gurgaon on the same day, where he died on 18.06.2014. PW9 Mohit Kumar, Senior Executive from the said hospital has been examined and he has proved the hospital bill Ex.P29 amounting to Rs.,12,22,728/-. Besides it claimants have also placed on record bills of medicines Ex.P21 to P27 amounting to Rs.44,754/-. After evaluating the above said evidence, the Tribunal has rightly held that the claimants are entitled to Rs.13,28,082/- as cost of treatment and medicine bills and finding of the Tribunal qua the same does not require any interference.

15. To prove the income of the deceased his Income Tax Returns for the assessment years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 have been produced on record as Ex.P6 to P10 by PW2 Milan Singh Rohilla, Tax Assistant, Income Tax Office, Rohtak. A perusal of these Income Tax Returns reveal that the total annual income of the deceased for the assessment year 2010-11 was Rs.6,20,854/-, 2011-12 was Rs.6,79,670/-, 2012-13 was Rs.8,52,850/-, 2013-14 was 6,51,707/- and 2014-15 was Rs.7,12,788/-.

To prove the agriculture income of the deceased the Tribunal has examined PW1 Rakesh Malik, Mandi Supervisor who has produced on record the “J' forms Ex.P1 to Ex.P5.

16. After considering the above evidence, it has been held by the Tribunal that the deceased owned patrol pump which was being run under the name of M/s Dhankhar Filling Station, Humayupur. He owned 22 acres of agricultural land. It has been held, that, from the Income Tax Returns filed by the claimants it is proved, that his total annual income from all the sources was around Rs.7 lakhs per annum. But at the same time, it has been admitted by his widow Roshni Devi while appearing as PW5 that the claimants are getting Rs.3,30,000/- per annum as income from agricultural land left by her deceased husband and they are further getting Rs.1,50,000/- per annum from the petrol pump, so the Tribunal has held that the actual loss caused to the claimants on account of death of the deceased is around Rs.2 lakhs per annum. By relying upon the decisions of **Rani Gupta (supra)** and **Pooja Verma (supra)**, it has been held that as the assets of deceased remained with the claimants, so the compensation is to be awarded to the widow, by factoring the value of the supervisory skills that he could bring to his property and has held that claim of the claimants as actual financial loss on account of death of the deceased as Rs.2 lakhs per annum appears to be genuine. So income of the deceased for purposes of determination of compensation was taken as Rs.2 lakhs per annum. As mentioned in the post mortem report, age of the deceased was taken as 48 years. After deducting 1/4th of the income towards the personal and living expenses, the dependency of the claimants upon the deceased was taken as Rs.1.50 lakhs per annum and multiplier of 13 was applied and the compensation was worked out as Rs.19,50,000/- (150000X13).

17. It has been held by the Hon'ble Supreme Court in **Anjali &**

others Vs. Lokendra Rathod & others, 2023 (1) RCR (Civil) 229 that "The provisions of Motor Vehicles Act, gives paramount importance to the concept of "just and fair" compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 188 of the Motor Vehicle Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability." It was further held therein that Income Tax Return is statutory document on which reliance be placed, where available, for computation of the annual income of the deceased.

18. I am in respectful submission with law laid down in the case supra that the documents, such as Income Tax Returns are considered as reliable evidence to determine the income of the deceased. But in the instant case this fact is also not to be brushed aside, that, the income of the deceased essentially constituted by returns from his capital assets i.e. petrol pump and agricultural land which have been duly bequeathed to the dependants. While stepping into the witness box, PW5 Roshni Devi widow of deceased Sant Ram has categorically admitted that business is still being run by cousin of Sant Ram deceased at the petrol pump and they are an earning a sum of Rs.1.50 lakhs. She has further deposed that for 22 acres of land, they are getting a sum of Rs.3,30,000/- per annum and has admitted that the entire agricultural land has been mutated in favour of the claimants. As such, it is the admitted fact by the claimants that the asset of the deceased i.e. petrol pump and agricultural land had been transferred to the claimants and they are earning a sum of Rs.3,30,000/- + 1,50,000 i.e. a total sum of Rs.4,80,000/- per annum from the said assets.

19. It has been held by the Hon'ble Apex Court in **State of Haryana Vs. Jasbir Kaur, 3003 (7) SCC 484** that - “land possessed by the deceased still remains with his legal heirs there is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source.” While referring to the case supra, Hon'ble Apex Court held in **K. Ramya Vs. National Insurance Company Ltd., 2022 (4) RCR (Civil) 435** that - “in our opinion, the above mentioned observations, though made in the context of agricultural land, would also be applicable to rent received from leased out properties as the loss of dependency arises mainly out of loss of management capacity or efficiency. As a rule of prudence, computation of any individual's managerial skills should lie between 10-15 % of the total rental income but the acceptable range can be increased in light of specific circumstances. The appropriate approach, therefore, is to determine the value of managerial skills along with any other factual considerations.”

20. Now adverting to the instant case, deceased was a businessman and was running a petrol pump and was also owning 22 acres of agricultural land and was deriving income also from the same. So keeping in view the ratio of law laid down in the case supra, what was the actual loss of dependency of the family, was his contribution to run the business, as assets of the business (petrol pump) and the agricultural land have remained with the claimants. Thus, the amount of compensation is required to be determined keeping in view that factor in mind. As it has been held in the case of **K. Ramya (supra)** that as a rule of prudence, computation of any

individual's managerial skills should lie between 10-15% of the total rental income. So keeping in view the facts and circumstances in the present case, I deem it proper to take the managerial skill of the deceased as Rs.15,000/- per month. The Tribunal has erroneously not added any income towards future prospects in the income of the deceased. Keeping in view the law laid down in the case of **Pranay Sethi (supra)**, as deceased was about 48 years at the time of his death in the accident, so 25% of the income is to be added towards future prospects. So the notional income of the deceased comes to Rs.18,750/- per month (15000+3750). Keeping in view the number of dependants, the deduction of 1/4th of income of the deceased towards personal living expenses has been rightly made by the Tribunal. After deducting 1/4th towards personal expenses the monthly dependency comes to Rs.14,062/- per month and the annual dependency comes to Rs.1,68,750/- (14062 x 12). As deceased at the time of death was 48 years of age so the multiplier of 13 has also been rightly applied by the Tribunal. After applying the said multiplier, compensation to be awarded to the claimants comes to Rs.21,93,750/-.

21. The Tribunal has granted Rs.1 lakhs as loss of consortium and Rs.25,000/- as funeral expenses, which are not inconsonance with the judgment of the Hon'ble Apex Court in **Pranay Sethi (supra)** and as per case supra a sum of Rs.70,000/- is required to be awarded to the claimants. The claimants are held entitled to get Rs.15,000/- as funeral expenses, Rs.15000/- for loss of estate and Rs.40,000/- for loss of consortium.

22. As Sant Ram remained under treatment at various hospitals at various places, so he must have incurred some transportation charges which

have not been granted by the Tribunal. So, Rs.10,000/- are granted as transportation charges. Further Rs.10,000/- are granted as attendant charges as nothing has been granted to the claimants on that count also.

23. The rate of interest i.e. granted at the rate of 7.5% per annum from the date of filing of the claim petition till realization of the award amount appears to be fair and just and does not call for any interference. So the amount of compensation that is to be granted to the claimants of deceased Sant Ram is re-worked as under:

1.	Loss of annual dependency	=	Rs.21,93,750/-
2.	Cost of treatment and medicines	=	Rs.13,28,082/-
3.	Conventional heads	=	Rs.70,000/-
4.	Attendant charges	=	Rs.10,000/-
5.	Transportation	=	Rs.10,000/-
	Total	=	Rs.36,11,832/-

24. Appellant Roshni Devi will be entitled to 50% of the total amount of the granted compensation while claimants No.2 to 6 will be entitled to remaining 50% of the amount of compensation in equal shares. The other terms and conditions will apply to the enhanced amount as given in relief clause by the Tribunal. Accordingly, FAO-652-2016 is partly allowed.

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

<u>FAO-984-2016:</u>

As per the claimants, Savitri Devi & others, deceased Richh Pal was employed on the petrol pump owned by his deceased brother Sant Ram and was getting Rs.15,000/- per month as salary and he was having income of Rs.10,000 from agricultural farming and thus, the total income of the deceased was Rs.25,000/- per month.

In this context, the claimants have produced on record audit report Ex.P28. The Tribunal has rightly held that the document Ex.P28 does not inspire confidence that deceased was getting salary of Rs.15,000/- per month by working on the petrol pump of his brother Sant Ram. Tribunal has also rightly observed that claimants have not produced on record any document to substantiate their contention that deceased was deriving any income from agriculture and dairy farming. In that eventuality, the Tribunal has taken income of the deceased as Rs.6000/- per month being the minimum wages of an unskilled worker fixed by the State Government under the Minimum Wages Act. But as the deceased was allegedly working at the petrol pump so the notional income of deceased for purpose of determination of compensation is taken as Rs.7000/- per month. As deceased was about 62 years of age at the time of his death in the accident, so no future prospects are to be added to the income of the deceased. Keeping in view the number of dependants, 1/3rd income of the deceased had been rightly deducted by the Tribunal towards personal and living expenses. So after deducting 1/3rd towards the personal expenses the monthly dependency comes to Rs.4,667/- per month and the annual dependency comes to Rs.56,000/- (4667 x 12). Keeping in view the age of the deceased, the multiplier of 7 has been rightly applied by the Tribunal and after applying the multiplier of 7, the compensation comes to Rs.3,92,000/- (56000 x 7).

The claimants have been held entitled to a sum of Rs.1 lakh on account of loss of consortium and Rs.25,000/- as funeral expenses. As observed above, it is not inconsonance with the ratio of law laid down by the Hon'ble Apex Court in **Pranay Sethi (supra).** However, in view of the ratio of authority supra, the claimants are entitled to get Rs.40,000/- for loss of consortium, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses.

The Tribunal has dismissed the claim petition qua claimant No.2 Poonam by holding that she being married daughter cannot said to be dependant of the deceased. The law is well settled that children of the deceased even if they are major they do not loose the status of legal representatives and are entitled to maintain claim petition. Though she was not dependant upon the deceased being married daughter, Rs.40,000/- are granted to her for loss of love and affection.

The total compensation that is to be granted is re-worked as under:

1.	Loss of annual dependency	=	Rs.3,92,000/-
2.	Conventional heads	=	Rs.70,000
3.	For loss of love and affection to appellant No.2.	=	Rs.40,000/-
	Total	=	Rs.5,02,000/-

So the claimants/appellants are held entitled to Rs.5,02,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization. Accordingly, the instant FAO-984-2016 is partly allowed.

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

A photocopy of this order be placed on the connected case i.e. FAO-984-2016.

(SUKHVINDER KAUR)
JUDGE

05.05.2023

harjeet

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No