IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 3662/2017&
FAO 3699/2017
Date of decision: 12.04.2023

FAO-3662-2017

New India Assurance Company Ltd. ……..Appellant

Vs.

Darshan Singh and others …..Respondents

AND

FAO-3699-2017

Darshan Singh and others ………..Appellants

Vs.

Shivam and others ..…..Respondents

CORAM: **HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Rahul Pathania, Advocate for
Mr. R.C. Kapoor, Advocate
for the appellant in FAO-3662-2017 and
for respondent No.3-Insurance Company
in FAO-3699-2017.

Mr. Vinod Kanwal, Advocate
for the appellant in FAO-3699-2017 and
for respondent Nos.1 to 3 in FAO-3662-2017.

Mr. Pawan Attri, Advocate for
Respondent Nos.1 and 2 in FAO-3699-2017 and
For respondent Nos.4 & 5 in FAO-3662-2017.

Nidhi Gupta,J.

By this common order, I shall dispose of the above said two appeals bearing FAO No.3662/2017 filed by the Insurance Company, and FAO 3699/2017 filed by claimants, as the facts, arguments and questions of law involved in both these appeals are identical. Both the appeals arise from Award dated 20.02.2017 passed by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal') in MACP case No.445/2016 filed u/s 166 and 140 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). However, for the sake of convenience, parties are being referred to by their litigative status in FAO No.3662/2017 filed by the Insurance Company.

2. Vide aforesaid Award dated 20.2.2017, Ld. Tribunal granted compensation of Rs.18,56,392/- to the claimants/ respondents no. 1 to 3 herein, along with interest @ 9% per annum from the date of filing of claim petition till realisation, on account of death of Sudesh Rani in a motor vehicular accident that took place on 17.9.2016.Claimants are the husband and two minor children of the deceased Sudesh Rani.

3. Ld. Tribunal on appraisal of pleadings and evidence adduced before it, concluded that deceased Sudesh Rani had died due to injuries suffered by her in a motor vehicular accident that took place on 17.09.2016 due to rash and negligent driving of Car bearing registration No.HR-41H-5734 (hereinafter referred to as the 'offending vehicle') being driven by respondent no.4, owned by respondent no.5 and insured by Appellant herein. Pursuant to the accident in question FIR No.471 dated 18.09.2016 was registered under Sections 279, 337 and 304-A IPC, 1860.

4. Ld. Counsel for the appellant-Insurance Company assails the impugned Award primarily on the ground that under the conventional heads, learned Tribunal has awarded an inordinately high amount of Rs.3,25,000/- whereas, as per law, the same should be Rs.1,32,000/- only. It is further submitted that as the vocation of the deceased was not proven on record, therefore, ld. Tribunal has correctly assessed the notional income of the

deceased as Rs.7976/- on the basis of relevant Minimum Wage Notification dated 05.04.2016.

5. Per contra, it is submitted by the ld. Counsel for the claimants that at the time of accident the deceased was about 33 years of age and was earning Rs.25,000/- per month by doing knitting and stitching work. It is submitted that however, ld. Tribunal has assessed income of the deceased on the lower side as only Rs.7976/- payable to a casual labourer, whereas it should be taken as Rs.8070/- per month. It is further submitted that nothing has been added to the income of the deceased towards future prospects. It is submitted that therefore, claimants are entitled to enhancement of compensation. In support of his contentions, learned counsel for the claimants relied upon the judgment of the Hon'ble Supreme Court in ***'Kirti & anr Vs. Oriental Insurance Company Ltd. (SC), Law Finder Doc ID#1795020.***'

6. In rebuttal, it is submitted by learned counsel for the Insurance Company that in case addition by way of future prospects is made, then a deduction of 1/3rd towards personal expenses is also required to be made.

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

8. Heard ld. Counsel for the parties.

9. Perusal of the impugned Award shows that the age of the deceased was determined to be 33 years at the time of death, on the basis of testimony of PW-1/claimant No.1/Darshan/husband of the deceased, as also on the basis of Ex.P-10 Aadhar Card of the deceased wherein year of birth of the deceased was shown to be 1983.

10. In assessing notional income of the deceased the Learned Tribunal referred to judgment of the Hon'ble Supreme Court in case of ***'Lata Wadhwa and others Vs. State of Bihar and others, 2001(4) RCR (Civil) 673'***, wherein income of housewife was assessed to be Rs.3000/- per month, as also to case of ***'Shankar Lal and others Vs. Madan Lal and others FAO-1060-2005',*** wherein notional income of housewife was assessed to be Rs.9000/- per month. Learned Tribunal also considered the Haryana Government Labour Department Notification No.IR-2/15993-16118 dated 05.04.2016. Upon consideration of all relevant material on record, Learned Tribunal further held that testimony of PW-1/claimant No.1-Darshan Singh-husband of the deceased, to the effect that the deceased was earning Rs.25000/- per month from knitting and stitching work, was not supported by any other oral or documentary evidence on record. It is only thereafter, that ld. Tribunal adopting a median approach, determined notional income of the deceased as Rs.7976/- per month. Ld. Counsel for the claimants has been unable to present any material before this Court either in support of his contention that deceased was earning Rs. 25,000/- per month from her alleged vocation, or show any error in the assessment so made by the ld. Tribunal.

11. Learned Tribunal further held that as income of the deceased was taken notionally, accordingly, no addition towards future prospects was required to be made, and even no deduction towards personal expenses could be made. In doing so, learned Tribunal relied upon '***Lata Wadha's case (supra);Paramjit Singh and another Vs. Dilbagh Singh @ Bagg and others (Vol.CLXXII-2013-4) of the Punjab Law Reported 328 (Punjab and Haryana High Court);***and ***Royal Sundaram Alliance Insurance Company***

Limited Vs. Manmeet Singh and others 2012 Accidents Claims Journal 2012 (Delhi High Court).

12. Accordingly, learned Tribunal calculated annual dependency of the claimants as Rs.95,712/- (Rs.7976x12). As the deceased was proven to be 33 years of age, learned Tribunal correctly applied the multiplier of 16 (Rs.95,712x16=Rs.15,31,392/-). Under the conventional heads, learned Tribunal granted Rs.25,000/- towards transportation of dead body and funeral expenses; Rs.1 lac was granted to claimant No.1 towards spousal consortium; and Rs.1 lac each was granted to the claimants No.2 & 3 being minor children of the deceased towards loss of love and affection. Accordingly learned Tribunal granted Rs.18,56,392/- as total compensation.

13. It is undisputed position in law that as per pronouncements of the Hon'ble Supreme Court in case of *'**National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**; '**Smt. SarlaVerma and others Vs. Delhi Transport Corporation and another';** and **'Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others',***under the conventional heads Rs.15,000/- is to be awarded towards funeral expenses; Rs.40,000/- each towards loss of consortium to each of the eligible claimants; and Rs.15,000/- towards loss of estate.

14. In the present case, as noticed above, learned Tribunal has granted Rs.3,25,000/- under the conventional heads, whereas, as per law, the claimants are entitled to Rs.1,50,000/- only under the conventional heads i.e. Rs.40,000x3=Rs.1,20,000+Rs.15000 funeral expenses+Rs.15000 loss of estate.

15. As regards arguments of learned counsel for the claimants that income has been wrongly taken as Rs.7976/- and ought to be taken as

Rs.8070/-, the same is rejected as ld. Counsel has been unable to show any reason as to why this should be so. Even otherwise, the difference is insignificant and negligible to merit any interference in this regard by this Court.

16. Argument of counsel for the claimants that an addition of 40% ought to have been made towards future prospects is also rejected as, even no deduction of 1/3rd has been made towards personal expenses.

17. Thus, as per the discussion hereinabove, the compensation as admissible to the claimants is reworked as under:-

Sr.No.	**Head**	**MACT (in Rupees)**	**Reworked in present appeal (in Rupees)**
1.	Income	7976	7976x12=95,712
2.	Future prospects	NIL	NIL
3.	Deduction towards personal expenses	NIL	NIL
4	Multiplier	16	16
5.	Loss of total dependency	15,31,392	15,31,392/-
6.	Spousal consortium	1,00,000	44,000/-
7.	Parental consortium	2,00,000	88,000/-
8.	Loss of Estate	Nil	16,500/-
9.	Funeral & transportation expenses	25,000/-	16,500/-
11.	**Total**	**18,56,392**	**16,96,392/-**

18. At time of issuance of Notice of Motion on 26.5.2017, this Court had stayed recovery of amount of compensation beyond Rs. 12.50 lacs. Interest on the compensation is maintained @ 9%. The ratio of apportionment, and mode of disbursement of compensation, as determined by the ld. Tribunal also remains unchanged.

19. In net result, the appeal filed by the Insurance Company bearing FAO 3662/2017 is **allowed;** while the appeal filed by claimants bearing FAO-3699/2017 is **dismissed** in the above terms.

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

21. A copy of this order be placed on the file of the connected case.

12.4.2023 **(Nidhi Gupta)**
ps-I **Judge**

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