201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO-3526-2018 (O&M)

Smt. Durgesh and others ..... Appellants

Versus

Sant Singh and others .... Respondents

FAO-500-2018 (O&M)

2.

The Oriental Insurance Company Limited ..... Appellant

Versus

Smt. Durgesh and others .... Respondents

Date of Decision: 22.03.2023

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Neeraj Khanna, Advocate, for
Mr. R.N.Singal, Advocate,
for the appellant in FAO-500-2018 and
for respondent No.3-Insurance Company in FAO-3526-2018.

Mr. Ashwani Arora, Advocate,
for the appellants in FAO-3526-2018 and
for respondents No.1 to 6 in FAO-500-2018.

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RAJBIR SEHRAWAT, J. (ORAL)

This shall dispose of two appeals, i.e. FAO-500-2018 filed by the Insurance Company of the offending vehicle and FAO-3526-2018 filed by the claimants, since both of these are arising out of the same award dated 16.10.2017 passed by the Motor Accident Claims Tribunal, Chandigarh (in short, 'the Tribunal'), in the claim petition pertaining to the same accident.

However, for the sake of brevity, the main facts are being taken from FAO-3526-2018.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petitions filed before the Tribunal.

The brief facts, as mentioned in the file, are that on 05.10.2016, Bijender Singh @ Bajander Singh along with Chhote Lal were going on the road from Saketri to District Court Complex, Panchkula, on an Activa Honda scooter. When they were crossing Shakti Bhawan Chowk, a truck bearing registration No.HR-68-A-2495, being driven by respondent No.1 in a rash and negligent manner, struck against their Activa Honda scooter. As a result, both of them fell down. They sustained serious and multiple injuries. Both of them were taken to the General Hospital, Sector-6, Panchkula. After giving preliminary treatment, Bijender Singh @ Bajander Singh was referred to the PGI, Chandigarh, where he died on 04.11.2016 on account of injuries suffered in the said accident. Regarding the said accident, an FIR No.372 dated 07.10.2016 was also registered at Police Station Sector-5, Panchkula, under Sections 279 and 337 of the Indian Penal Code. Based on these facts, the claimants, who are the widow and five children of the deceased Bijender Singh @ Bajander Singh; had filed claim petition asserting therein that the deceased was the age of 39 years. He was working as a painter. His monthly income was Rs.15,000/-. Hence, the family had suffered loss of income; besides loss of love and affection.

On being put to notice, respondents No.1 and 2 filed joint written statement and pleaded that no accident having taken place with the vehicle in question. It was further asserted that, in any case, the said truck was insured with the respondent-Insurance Company. Respondent No.3-Insurance Company filed separate written statement taking preliminary objections regarding non-intimation in time and driving of the offending vehicle being in violation of the terms and conditions of the insurance policy. Still further, it was asserted that there was complete callousness and reckless on the part of the driver of the offending vehicle.

To prove their assertions, the claimants examined the widow of deceased-Bijender Singh @ Bajander Singh as PW-2 and eye-witness Chhote Lal, who was driving the Activa Honda scooter as PW-1. Driving license of Chhote Lal was produced as Exhibit P-3. Besides this, the post-mortem report and photocopy of Voter ID Card of the deceased-Bijender Singh @ Bajander Singh was led in evidence as Exhibit P-6 and Exhibit P-7 respectively. Other than these, the medical bills and Aadhar Card of the claimants were also placed on record. On the other hand, respondents No.1 and 2 did not lead any evidence on the file. Respondent No.3 led in evidence only the photocopy of the certificate of the fitness of the offending vehicle as Mark 'A' and the driving license of respondent No.1 as Mark 'B'. Insurance certificate was placed on record as Mark 'C'.

After hearing the learned counsel for the parties and appreciating the material on record, the Tribunal has assessed the income of the deceased to be Rs.6,540/-. The age of the deceased has been taken as 45 years on the basis of the post-mortem report. Accordingly, the multiplier of 14 has been applied. The future prospects has been calculated at the rate of 30%. Accordingly, the claimants have been awarded an amount of Rs.10,71,168/- as compensation for loss of dependency. Beside this, the compensation under conventional heads have also been awarded to the claimants. In total, an amount of Rs.13,54,828/-, including the medical bills of Rs.48,660/-, has been awarded. To challenge the said Award, both the present appeals have been filed.

Arguing the case, learned counsel for the Insurance Company has submitted that since the age of the deceased has been taken as 45 years, therefore, the future prospects could have been awarded only at the rate of 25%. The counsel has relied upon the judgment of the Supreme Court rendered in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi and others, (2017) 16 SCC 680***, to buttress his argument. Besides; the compensation under the conventional heads has also been awarded in violation of the judgment of the Superme Court rendered in the case of ***Pranay Sethi (supra)***. The amount of Rs.1 lakh has wrongly been awarded on account of loss of love and affection, whereas, that has to be restricted to the amount as per the said judgment. No separate amount for loss of love and affection could have been awarded. Hence, the compensation deserves to be reduced; accordingly.

On the other hand, the learned counsel for the claimants has submitted that the Tribunal has gone wrong in law on multiple counts. The witnesses produced by the claimants have duly proved the avocation of the deceased to be a painter. Although, there was no documentary proof to prove the exact figure of income earned by him from this work, however, even if the avocation is proved, then the income of the deceased has to be taken as per the prevailing market rates for the said allocation. The Tribunal could not have resorted to the wages prescribed under the Minimum Wages Act for that purpose. Learned counsel has relied upon judgments of the Hon'ble Supreme Court rendered in **Chameli Devi and others Vs. Jivrail Mian and others, 2019 ACJ 3011** and in the case of **Maheshwari and others Vs. Ramachandran and others** passed in **SLP © No.11783 of 2020** decided on 13.12.2022, as well as, upon the judgment rendered by this Court in **FAO No.3901 of 2022** titled as **The New India Assurance Company Limited Vs. Smt. Rachhpal Kaur and others** decided on 13.02.2023. Accordingly, it is submitted that the income of the deceased should have been assessed at the rate of Rs.15,000/- per month as asserted in the claim petition. Learned counsel has further submitted that there is a document issued by the State authority in the form of Voter Identity Card. The said Voter Identity Card gives the date of birth of the deceased as 15.12.1977. Accordingly, as on the date of accident, the age of the deceased would be only 39 years. Hence, the age has to be taken as such; and accordingly, the multiplier of 15 has to be applied. Similarly, the loss of future prospects of the deceased has to be compensated @ 40%. Learned counsel has relied upon judgment of the Supreme Court rendered in ***Pranay Sethi's case*** (supra). Learned counsel has also submitted that even under the conventional heads, the compensation has not been granted as per the judgments of the Supreme Court. The same deserves to be enhanced upto the suitable level so as to bring the same in consonance with the judgments of the Hon'ble Supreme Court judgment in ***Pranay Sethi's case*** (supra) and **N. Jayasree Vs. Cholamandalam, 2021 ACJ 2685**.

Having heard the learned counsel for the parties and having gone through the record, this Court finds substance in the arguments of learned counsel for the claimants. Needless to say; that the Election Voter Identity Card of the deceased has been placed on record before the Tribunal. That card was prepared on 23.12.2013, much before the date of accident. Therefore, there is no reason to discard the document as indicative of the date of birth of the deceased. Although, the post-mortem report mentions the date of birth to be 45 years, however, it is not based on any medical test, rather, the same is mentioned only as disclosed in the FIR. Therefore, if the Court is to chose between the date as mentioned in the voter ID card, undisputed, Government authority issued document mentioning the date of birth of the deceased on the one hand and the FIR on the other hand, then obviously, the preference has to be for the Voter Card which was prepared much before the date of accident and which is issued by the Government authority. Hence, the age of the deceased is assessed to be 39 years as indicated in the Voter Identity Card. Accordingly, the multiplier of 15 is required to be applied and the loss of future prospects has to be compensated at the rate of 40% of the assessed income, in terms of the judgments of the Hon'ble Supreme Court mentioned above. The deduction of one-fourth has already and rightly been applied by the Tribunal.

So far as the income the deceased is concerned, the witnesses examined by the claimants have proved the avocation of the deceased. Therefore, even if the exact figure of earning from the avocation is not proved by the claimants, then also the income which was prevalent in the market on the date of accident for the said avocation can be safely taken as a guiding factor for assessing the income of the deceased. The avocation of the deceased being a painter, it cannot be said, by any means, that he may not be earning even Rs.10,000/- on the date of accident. Rather, on the said date, the painter earned much more wages than that. Hence, the income of the deceased can be safely assessed at Rs.10,000/- per month. After making deduction of one-fourth for personal expenses and an addition of 40% on account of loss of future prospects, the monthly loss of dependency is taken at Rs.10,500/-.

So far as the conventional heads are concerned, it is not even disputed by the learned counsel for the parties, that the same are required to brought in consonance with the above said judgments passed by the Hon'ble Supreme Court.

However, this Court also finds substance in the argument of learned counsel for the Insurance Company that grant of Rs.1 lakh on account of loss of love and affection cannot be sustained in view of the judgment mentioned above.

In view of the above, the claimants are held entitled to the compensation as given below:-

Sr. No.	Heads	Amount assessed
1.	Income	Rs.10,000 per month
2.	Future prospects @ 40%	Rs.10,000 X 40% =Rs.4,000
3.	Annual Income	Rs.14,000 X 12 =Rs.1,68,000
4.	Deduction @ 25%	Rs.1,68,000 / 4 =Rs.42,000
5.	Multiplier	15
6.	Dependency	Rs.1,26,000 X 15 =Rs.18,90,000
7.	Loss of Consortium @ Rs.44,000 each	Rs.2,64,000
8.	Funeral Expenses	Rs.16,500
9.	Loss of Estate	Rs.16,500
10.	Medical Bills	Rs.48,660
11.	Total Compensation	Rs.22,35,660
12.	Compensation Awarded by MACT	Rs.13,54,828
13.	**Enhanced Compensation**	**Rs.8,80,832**

The interest is retained at the rate as was awarded by the Tribunal.

Accordingly, the appeal filed by the claimants i.e. FAO-3526-2018 is allowed in the above said terms and the appeal filed by the

Insurance Company i.e. FAO-500-2018 is dismissed.

All pending miscellaneous application(s), if any, stands disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

22.03.2023
adhikari

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No