

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

268

FAO No.8504-2017 (O&M)
Date of decision: 09.03.2023

IFFCO-TOKIO General Insurance Co.

...Appellant(s)

Vs.

Saroj & Others

...Respondent(s)

FAO No.6836-2017 (O&M)
Date of decision: 09.03.2023

Saroj & Others

...Appellant(s)

Vs.

Surender Kumar & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Abhimanyu Batra, Advocate for appellant-Insurance Company
(in FAO-8504-2017)

Mr. Sagar Aggarwal, Advocate for appellants-claimants
(in FAO-6836-2017)

NIDHI GUPTA, J.

This order shall dispose of the abovesaid two appeals arising out of one Award dated 26.04.2017 passed by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as "the learned Tribunal") in MACT Case No.25 of 2015 filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as "the Act"). FAO-8504-2017 is filed by the Insurance Company; and FAO-6836-2017 is filed by claimants. For the sake of convenience and with the consent of learned counsel for the parties, facts, which are even otherwise common, have been taken from FAO-8504-2017 filed by the Insurance Company. As common questions of law and fact are involved in both the appeals, the same are being disposed of by common order.

2. Learned Tribunal on the basis of evidence and pleadings adduced before it concluded that deceased-Silak Ram had died due to injuries suffered by him in a motor vehicular accident that took place on 04.08.2015 due to the rash and negligent driving of truck bearing registration No.HR-63B-3226 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.4 and owned by respondent No.5. Learned Tribunal awarded compensation of Rs.19,35,400/- along with interest @ 7.5% per annum from the date of filing the petition till realization. Claimants are the widow, and two minor sons of deceased-Silak Ram.

3. Learned counsel for the appellant-Insurance Company assails the impugned Award inter alia, on the ground of quantum and submits:

a) that income of the deceased has been taken as Rs.9,000/- per month on the basis of Deputy Commissioner rates, but the same ought to have been taken as Rs.5,886/- as per relevant minimum rate of wages in State of Haryana;

b) that amounts granted by learned Tribunal towards non-pecuniary damages are on higher side;

c) that as per Aadhaar card (Exhibit R1), date of birth of deceased was shown to be 01.01.1969. Accordingly, deceased was more than 45 years of age at the time of accident. Ever in the PMR, age of deceased has been mentioned as 47 years and therefore, multiplier of 13 should have been applied whereas, learned Tribunal has applied multiplier of 14;

d) that future prospects have been granted @ 30% whereas the same should be @ 25%;

e) that consortium of Rs.6,00,000/- granted to the claimants, as also amount of Rs. 1 lac under loss of estate, and Rs. 25,000/- for funeral expenses are also on higher side.

4. Per contra, it is submitted by learned counsel for the claimants;

a) that there is no error in taking income of the deceased as per Deputy Commissioner rates. In support of his contention, learned counsel relies upon judgment of this Court in ***FAO 5294 of 2016 "New India Assurance Company Ltd. Vs Geeta Devi @ Kavita & Others"***; and ***FAO-587-2016 "HDFC ERGO General Insurance Co. Ltd. Vs. Sitara & Others"***.

b) that as per matriculation examination certificate (Exhibit P6) age of the deceased has been mentioned as 07.10.1970. Accident had taken place on 04.08.2015 and therefore, deceased was less than 45 years of age at the time of accident and therefore, application of multiplier of 14 is correct;

c) that deduction of $1/4^{\text{th}}$ ought to have been made towards personal expenses as every member of the family is one unit and therefore, dependency should have been taken as $3/4^{\text{th}}$ of the income.

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

6. I have heard learned counsel for the parties.

7. a) As regards income of the deceased, it has been pleaded by the claimants that the deceased had agricultural income of Rs. 50,000/- per month. However, in this regard, it is established position in law that income from agriculture is not included while assessing income for purposes of computing compensation payable to claimants as, upon death of the deceased, claimants are not deprived of the agricultural land and therefore, said income from land continues even after death of the deceased. Thus, there is no loss of agricultural

or dairy-farming income as said income is still available with the appellants. As such, there is no merit in this ground taken by the claimants in their Appeal;

b) It has further been vehemently submitted by learned counsel for the claimants that income should be taken as per DC rates. Learned counsel has also relied upon judgments of this Court in **Sitara (supra)** and **Geeta Devi (supra)**. However, in this respect, Hon'ble Supreme Court in case of **Civil Appeal No.9014 of 2011 titled as "Govind Yadav Vs. The New India Insurance Co. Ltd."** has clearly held that where claimants are unable to prove monthly earnings of deceased, in such cases, compensation has to be assessed on basis of Minimum Wages payable to worker at the relevant time. Special wages as per DC rates cannot be granted as these are given only for any special work undertaken by the Deputy Commissioner, or when labour is employed in some emergency. There is no doubt that DC rates are special rates given by the Deputy Commissioner for his district, same being restricted to his district only, and are therefore, different for each district of the State; whereas Minimum Wage rates issued by the Government, are uniformly applicable throughout the State and therefore, constitute a better measure for assessing notional income of the victim. Accordingly, in view of the judgment of Hon'ble Supreme Court in **Govind Yadav (supra)**, notional income of the deceased is assessed as Rs.5,886/- per month as per minimum wage rates prevalent in the State of Haryana at the relevant time;

c) As regards age of the deceased, Aadhar Card (Exhibit R1) mentions his date of birth as 01.01.1969. Further, PW2/respondent No.1/claimant No.1/widow of deceased in her evidence has admitted Exhibit R1 and proved the same, and admitted date of birth of deceased as mentioned in Exhibit R1 as

01.01.1969. Moreover, in the PMR, age of deceased has been mentioned as 47 years. Accordingly, multiplier of 13 is applicable;

d) Accordingly, as per judgment of Hon’ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680**, future prospects have to be added @ 25%;

e) Deduction of 1/3rd as made by learned Tribunal is correct as there are three claimants;

f) Even consortium and other amounts as granted by learned Tribunal are excessive and on higher side, and not in accordance with law laid down by the Hon’ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104; and National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680**. Accordingly, compensation admissible to the claimants is re-worked as follows:-

HEADS	MACT	AMOUNT
Income	Rs. 9,000/-	Rs.5,886/-
Future prospects	@ 30% = Rs.2700/-	@ 25% = Rs.1,471.5/-
Total income	Rs. 11,700/-	Rs.7,357/-
Deduction of 1/3 rd	-Rs.3900/- =Rs.7800/-	Rs.2,452/-
Total annual income	Rs. 93,600/-	Rs.58,872/- (4906x12)
Multiplier	x14=Rs.13,10,400/-	x13 = Rs.7,65,336/-
Loss of estate	Rs. 1 lac	Rs.15,000/-
Consortium to respondents	Rs. 6 lacs	Rs.40,000/- x 3 = 1,20,000/-
Funeral expenses	Rs. 25,000/-	Rs.15,000/-
10% increase		Rs.7,000/-
Total	Rs.19,35,400/-	Rs.9,22,336/-

8. Ratio of apportionment and manner of disbursement of compensation as determined by learned Tribunal is maintained. Rate of interest shall be 6% per annum from the date of filing the claim petition till realization. Both the appeals accordingly, stand **disposed of** in above terms.

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

09.03.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No