IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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Date of decision: 27.04.2023

FAO-1600-2018 (O&M)

Gurprit Kaur & Others

...Appellant(s)

Vs.

New Hargobind Transport Co. & Others

...Respondent(s)

***

FAO-995-2017 (O&M)

The Oriental Insurance Co. Ltd.

...Appellant(s)

Vs.

Gurprit Kaur & Others

...Respondent(s)

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

Present:- Mr. Bhavyadeep Walia, Advocate
for the appellants (in FAO-1600-2018)

Mr. Raj Kumar Bashamboo, Advocate
for the appellant (in FAO-995-2017)

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NIDHI GUPTA, J.

By this common order, I shall dispose of FAO-1600-2018 filed by the claimants; and FAO-995-2017 filed by the Insurance Company. Both the appeals are being disposed of by common order as facts, arguments, and questions of law involved in both the Appeals are identical, and both appeals arise from one Award dated 09.11.2016 passed by Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as "the learned Tribunal") in MACT Case No.44 of 28.10.2015, filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

2. For the sake of convenience, parties are being referred to by their litigative status before the learned Tribunal.

3. Vide the impugned Award dated 09.11.2016, learned Tribunal has awarded compensation of Rs.24,36,155/- to the claimants along with interest @ 7% per annum from the date of filing the petition till realisation. Learned Tribunal awarded compensation as above on account of death of Dev Raj. The learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Dev Raj had died due to injuries suffered by him in a motor vehicular accident that took place on 13.05.2015 due to rash and negligent driving of bus bearing registration No.PB-04M-9953 (hereinafter referred to as "the offending vehicle") being driven by respondent No.2, owned by respondent No.1 and insured by respondent No.3/appellant/Insurance Company in FAO-995-2017. The four claimants are the widow and three major children of deceased-Dev Raj. Respondents were held jointly and severally liable to pay the compensation.

4. Learned counsel for the Insurance Company assails the impugned Award primarily on the ground of quantum. It is inter alia, submitted:

a) that claimants No.2 to 4 are major children of the deceased. It is submitted that as per statement of CW2/claimant No.1/widow of the deceased herself, both her sons are employed and daughter is married. Accordingly, deduction of 1/4th made by the learned Tribunal on account of personal expenses is incorrect and the same ought to have been 50% in view of the fact that there is only one dependent of the deceased;

b) that at the time of death, deceased was more than 51 years of age. Date of birth of the deceased was not on record and learned Tribunal had determined his age to be between 51-55 years as per postmortem report (Exhibit C1). It is very fairly submitted that, therefore, though the Tribunal had made no addition towards future prospects, however, claimants would be entitled to addition of future prospects @ of 15%;

c) that learned Tribunal has granted Rs.1 lakh on account of loss of consortium and Rs.25,000/- towards funeral expenses. However, the said amounts are not as per judgment of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680** and total sum of Rs.70,000/- is to be granted under conventional heads.

5. On the other hand learned counsel for the claimants inter alia, submits:

a) that claimants are entitled for enhancement of compensation as nothing has been granted by learned Tribunal towards future prospects. It is submitted that as per matriculation certificate of the deceased (Exhibit C3), date of birth of the deceased is 19.04.1965.

Date of accident is 13.05.2015. Accordingly, deceased was 50 years and 24 days at the time of accident;

b) that it has been proven on record that the deceased was a Government employee and drawing salary of Rs.23,345/- per month and is therefore, entitled to an addition of 30% towards future prospects;

c) that learned Tribunal has correctly made deduction of 1/4th towards personal expenses as all the four claimants were dependent on the deceased. Being children of the deceased, mere pecuniary dependence on income of the deceased is not required to be established and claimants had an emotional dependence on the deceased which also has to be considered. In support of his contention, learned counsel relies upon judgment of Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Birender & Others Law Finder Doc ID # 1665184;** and judgment of Karnataka High Court in **Reliance General Insurance Co. Ltd. Vs. Gangappa Law Finder Doc ID # 2023388;**

d) As regards conventional heads, learned counsel for the claimants submits that amounts granted by learned Tribunal is insufficient as, each of the claimants are entitled to Rs.40,000/- towards consortium. It is further submitted that nothing has been granted by way of loss of estate.

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

7. I have heard learned counsel for the parties.

8. Perusal of record of the case shows that although the learned Tribunal in para 11 of the impugned Award has noticed that the claimants had produced and proved copy of Matriculation Certificate of the deceased (Exhibit C3), yet learned Tribunal has not considered the said document while determining age of the deceased. Learned Tribunal has merely relied upon postmortem report (Exhibit C1) of the deceased to hold that deceased was between ages of 51 to 55 at the time of death. In my view, learned Tribunal is in patent error in ignoring vital piece of evidence in respect of age of the deceased.

9. Perusal of Lower Court record reveals that as per Exhibit C3/Matriculation Certificate of the deceased (available at page 52 of the LCR), date of birth of the deceased is recorded therein as 19.04.1965. Learned counsel for the Insurance Company is unable to controvert this evidence. Thus, the deceased was 50 years and 24 days/50 years, at the time of accident. It also remains undisputed that prior to death, the deceased was a salaried government employee. Accordingly, an addition of 30% is required to be made towards future prospects.

10. As regards income of the deceased, there is sufficient evidence on record in the form of salary certificate (Exhibit CX) issued by Punjab State Power Corporation Limited which was also duly proven by CW3-Sanjeev Kumar, LDC, PSPCL, Bhagta Bhaika, which proved that the deceased was employed with PSPCL and drawing salary of Rs.23,345/- per month. Accordingly, annual income of the deceased comes to

Rs.23,345/- x 12 = Rs.2,80,140/-. As deceased was 50 years old, multiplier of 13 has to be applied. Thus, total dependency is worked out to Rs.36,41,820/- (Rs.2,80,140/- x 13).

11. As regards dependency, judgment of Hon'ble Supreme Court in **Birender (supra)** relied upon by learned counsel for the claimants is distinguishable as, in the said case pecuniary dependency of the claimants upon the earnings of the deceased therein had been duly established. Admittedly, that is not so in the present case. In the present case, CW1/Shashi Kumar/claimant No.3/son of the deceased in his cross-examination (available at page No.26 of the LCR), has admitted that he was employed at petrol pump albeit on temporary basis. Even CW2/claimant No.1/widow of the deceased has admitted in her cross-examination (available at page 31 of the LCR), that her son is employed at petrol pump. Thus, it is clear that sons of the deceased were gainfully employed and therefore, cannot be taken as dependents on the income of the deceased. As regards daughter of the deceased, learned counsel for the claimants is unable to deny the fact that daughter of the deceased is married and well settled in her matrimonial home. In view of the above facts, it cannot be held that claimants No.2 to 4 were dependent on the earnings of the deceased for their sustenance.

12. In holding thus, I draw support from judgment of Hon'ble Supreme Court in ***(SC) SLP No.13931 of 2017 titled as "New India Assurance Co. Ltd. Vs. Vinish Jain & Others"*** wherein it has been

held that major children of the deceased being not dependent on the deceased, are not entitled to compensation.

13. In this regard, reliance may also be placed upon judgment of this Court in **FAO-3109-2017 titled as "Smt. Chand Rani & Others Vs. Pardeep Singh & Others" decided on 13.08.2018.** In the said case, it has been held that:

> *"Counsel for the appellants has argued that the Tribunal erred in making a deduction of 50%, whereas, apart from the widow, there were four children. I find that all the four children were married and well settled and consequently the only person who was dependent upon the deceased was his wife and, therefore, the Tribunal committed no error in directing deducting 50% from the income of the deceased. Consequently, this appeal is dismissed."*

14. Accordingly, deduction of 50% has to be made towards personal expenses. Thus, total dependency works out to be Rs.36,41,820/- - Rs.18,20,910/- = Rs.18,20,910/-.

15. As regards grant of compensation under conventional heads, as per latest judgment of Hon'ble Supreme Court in **Civil Appeal Nos.2410-2412/2023 titled as "Shri Ram General Insurance Co. Ltd. Vs. Bhagat Singh Rawat & Others" decided on 27.03.2023,** it has been held that total amount payable under the head of consortium is Rs.40,000/-; meaning thereby that consortium in toto of Rs.40,000/- has to be granted and *each* of the claimants is not entitled to Rs.40,000/- *each* as consortium. Hon'ble Supreme Court in the above said judgment has also held that Rs.15,000/- has to be granted by way of funeral expenses; and

Rs.15,000/- for loss of estate. Accordingly, a total sum of Rs.70,000/- can be granted under the conventional heads. However, has further held that 10% increase thereupon has to be given.

16. Above said judgment of the Hon'ble Supreme Court in **Bhagat Singh Rawat (supra)** has been reiterated by the Hon'ble Supreme Court in **SLP (C) No. 16767 of 2022** titled as "**Mehmooda Bee & Others Vs. National Insurance Co. Ltd";** and in **Civil Appeal No.6551 of 2022** titled as **"Bebi Giri Vs. National Insurance Co. Ltd."**, to hold that all claimants would be entitled to a total sum of Rs. 70,000/- under the conventional heads. However, it has also been held that an increase of 10% is required to be made thereupon. Accordingly, in the present case, claimants are entitled to a total amount of Rs.77,000/- under conventional heads. Thus, compensation payable to the claimants, is reworked as follows in tabular form:

HEADS	**AWARDED BY MACT**	**AWARDED BY THIS COURT**
Income	Rs.23,345/-	Rs.23,345/-
Future Prospects	NIL	(30%) Rs.23,345/- + Rs.7,003.5/- = Rs.30,348.5/-
Annual income	Rs.23,345/- x 12 = Rs.2,80,140/-	Rs.30,348.5/- x 12 = Rs.3,64,182/-
Multiplier	Rs.2,80,140/- x 11 = Rs.30,81,540/-	Rs.3,64,182/- x 13 = Rs.47,34,366/-
Deduction	(1/4th) Rs.30,81,540/- - Rs.7,70,385/- = Rs.23,11,155/-	(50%) Rs.47,34,366/- - Rs.23,67,183/- = Rs.23,67,183/-
Conventional heads	Rs.25,000/- + Rs.1 lakh + Rs.23,11,155/- = Rs.24,36,155/-	Rs.23,67,183/- + Rs.77,000/- = Rs.24,44,183/-
Total	**Rs.24,36,155/-**	**Rs.24,44,183/-**

17. Rate of interest of 7% as awarded by the learned Tribunal is maintained on enhanced compensation as well, from date of filing claim petition till realization.

18. In view of the above discussion, both the appeals are partly allowed as above.

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

27.04.2023 **(Nidhi Gupta)**
Sunena **Judge**

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