2023:PHHC:111144

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-799-2018 (O&M)

United India Insurance Company Limited

...Appellant

VERSUS

Preeti and others

...Respondents

(ii) FAO-809-2018 (O&M)

United India Insurance Company Limited

...Appellant

VERSUS

Rekha Devi and others

...Respondents

Date of Decision: August 24, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.D.P.Gupta and Mr.Shubham Gupta Advocates,
for the appellant.

Mr.Samir Rathore, Advocate
for respondent No.1 and 2 (in FAO-799-2018) and
for respondent No.1 (in FAO-809-2018).

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ARCHANA PURI, J.

These are two appeals, filed by the Insurance Company, thereby, assailing the Award dated 29.09.2017 passed learned Motor Accident Claims Tribunal (hereinafter referred to 'Tribunal'), thereby, granting compensation, on account of deaths of Paramjeet Singh @ Manpreet @ Manu and Amit Kumar, in a motor vehicular accident, which took place on 06.03.2015.

On appraisal of the evidence, brought on record, learned Tribunal had granted compensation to the extent of Rs.16,10,496/- qua death of Paramjeet Singh @ Manpreet @ Manu (Claim petition No.I) and on account of death of Amit Kumar (Claim Petition No.II), compensation was granted to the extent of 15,59,840/-.

Aggrieved with the same, the Insurance Company has filed the present appeals.

So far as, fact and manner of accident as well as involvement of motorcycle bearing registration No.HR-03P-3922, in the accident and the liability, so fastened upon the owner-cum-driver and insurance company, is concerned, no appeal, as such, has been filed by LRs of Sitar Mohammad (owner-cum-driver), who had also died in the accident in question. As such, fact and manner of accident as well as involvement part and liability, so fastened upon the LRs of Sitar Mohammad, has attained finality. However, two appeals in hand, have been filed by the Insurance Company to challenge the quantum of compensation, so granted.

As evident from the record, both the deceased were asserted by the respondents-claimants to be indulging in agricultural pursuit and earning Rs.15,000/- per month. However, on account of no satisfactory evidence coming on record, with regard to the avocation, so followed, by both the deceased, learned Tribunal had considered both the deceased as unskilled labourer and on the basis of Notification bearing Endst. No.335-450/DN/2015-2016 dated 05.05.2015, issued by the Deputy Commissioner, Panchkula, in the financial year 2015-2016, considered the monthly salary of unskilled labourer and the earnings of the deceased were assessed to be Rs.9320/- and thereupon, further compensation was computed, keeping in view their age.

However, the Insurance Company had asserted that in fact, it was required on the part of learned Tribunal to have assessed the compensation, while considering the minimum wages, as per the Notification of the Haryana Government, prevalent at the relevant time. It is submitted that at the relevant time, the minimum wages were Rs.5812/- per month.

In fact, learned counsel for the appellant assiduously submitted that the compensation ought to be worked upon, as per minimum wages, which is standardised basis and this has been so followed by the Hon'ble Supreme Court in various cases and few of them are '***Manusha Sreekumar and others vs. United India Insurance Co. Ltd., 2022 SCC Online SC 1441***, ***Rajan vs. Soly Sebastian and another, 2015(10) SCC 506*** and furthermore, also reliance has been placed upon the judgments passed by this Court. Few of the judgments passed by this Court are '**Oriental Insurance Company Limited vs. Smt.Ompati, 2018 ACJ 2804**' and **'*United India Insurance Co. Ltd. vs. Smt.Neelam and others',*** passed in ***FAO-4712-2015,*** decided on ***21.09.2018***.

Further, it has also been submitted that learned Tribunal had erroneously taken the future prospects @ 50%. However, addition has to be made @ 40%, in view of the ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***. Considering the same, it is submitted that the compensation, ought to be reduced, qua both the aforesaid deceased. As such, a prayer has been made for acceptance of both the appeals and to appropriately reduce the amount of compensation, so awarded.

On the other hand, learned counsel for the respondents-claimants has assiduously submitted that there is no bar to make assessment of the compensation on the basis of DC rates. It is not mandatory that all the time, it should be minimum wages, that has to be taken into consideration. In this regard reference has also been made to the judgment passed by this Court in '***National Insurance Company Ltd. vs. Meena Devi and others, passed in FAO-782-2022, decided on 11.03.2022'***. Furthermore, it is submitted that looking at the young age of both the deceased, applying the DC rates for the assessment of the compensation, was the most appropriate one, as per the demand of situation. Thus, a prayer has been made for dismissal of both the appeals.

In view of the submissions, so made, the sole ground to assail the Award, is with regard to application of DC rates for making assessment of compensation or the rates, prescribed under the Minimum Wages act, 1948.

At the very outset, it is pertinent to mention that even though, it was specific claim of the claimants about both the deceased to be indulging in agricultural pursuit and earning Rs.15,000/- per month, but however, relating to said assertion, no satisfactory evidence had come on record and in the given circumstances, learned Tribunal proceeded further to make assessment of the earnings, while considering them to be unskilled workers. In the backdrop of the same, it is the minimum wages as fixed by the Minimum Wages Act, which should be taken as the primary guiding factor, while assessing the income, for the purpose of calculation of the compensation to be awarded under the Motor Vehicles Act.

At the same time, it should also be considered that it is not possible to hold that in all situations, where no documentary evidence is brought on record, it is the minimum wage, as fixed under the Minimum Wages Act, which alone is to be assessed as the income of the deceased/injured, dehors the facts and circumstances of a particular case. Undoubtedly, the minimum wage, fixed under the Minimum Wages Act, provides a sound criterion/guideline and benchmark to assess the income of the deceased/injured, in such cases, but at the same time, the Tribunal or the Court, as such, cannot be confined or restricted to the same. However, as submitted by learned counsel for the respondent, it is always open to the Tribunal/Court to make assessment of the income, at the rate, which may be higher than the minimum wages, so notified, keeping in view the evidence on record in that particular case.

Also, it should be noted that even if, there is no specific documentary evidence to prove the income, but oral evidence led by the claimants inspires confidence and is corroborated by some attending circumstances, the Court/Tribunal may assess the income, at a rate higher than the minimum wages or assess the same, as per DC Rates. No straitjacket or strict criteria, as such, has been laid down.

It has been held in a plethora of judgments by the Hon'ble Supreme Court that it is the duty of the Tribunal/Court to award '**just compensation**'. Motor Vehicles Act is a benevolent piece of legislation, therefore, to circumscribe the scope of assessment of income of the deceased/injured to the minimum wages, as may be notified under the Minimum Wages Act, would not be justified. However, needless to say, assessment of income in cases, where there is no specific documentary evidence led, in support of the claim, such assessment would be dependent upon the facts and circumstances of each case. There may be circumstances spelt out, which calls for higher compensation. However, learned Tribunal/Court, while keeping in view the minimum wages, fixed under the Minimum Wages Act, as basic criteria, at the outset, would proceed to determine, whether income of the deceased/injured, is to be assessed, at higher level, keeping in view the evidence brought on record.

In the impugned Award, there is no reasoning, as such, given about any such special circumstances, spelt out to attract compensation, on the basis of the DC rates. The DC rates are meant for payment to employees in different departments, out of the contingency. It depends upon the nature of kind of work, which is required to be performed, depending upon the contingency arising and also with regard to the connecting circumstances, such like availability of the labour etc. for doing the needful work, the rates, as such, are fixed and the same vary from District to District and as such, it is not based upon some standardisation, existing all through.

In the given circumstances, considering the kind of evidence, coming on record, there was not necessity for learned Tribunal to deviate from the assessment of compensation, on the basis of minimum wages and instead, to follow DC rates.

Thus, as already observed aforesaid, compensation has been worked upon, while taking the monthly earnings as Rs.9320/- whereas, minimum wages existing at that time was Rs.5812/-. There was good lot of difference in two rates. Obviously, on account of no such peculiar circumstance spelt out, the compensation should be worked upon the basis of the minimum wages.

In the light of the aforesaid observation, the compensation, so worked upon, calls for re-computation.

So far as, the compensation to be granted on account of death of Paramjeet Singh @ Manpreet @ Manu is concerned, the monthly is taken to be Rs.5812/-, out of which, deduction of 1/3rd, ought to be made, on account of personal expenses. Making it to be so, the monthly dependency is worked upon as **Rs.5812-1937(1/3rd)=Rs.3,875/-**.

Keeping in view the age of the deceased, which as per the post-mortem report is 24 years and falls in the category of 21-25 years, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition of 40% has to be made as future prospects, to the earnings, so worked upon and thus, the amount comes to be **Rs.3875+1550(40%)=Rs.5425/-** per month. Therefore, annual dependency comes to be **Rs.5425x12=Rs.65,100/-**. The suitable multiplier, as per guidelines laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, is '**18**'. Thus, after applying the multiplier of '**18**', the loss of dependency comes to be **Rs.65,100x18= Rs.11,71,800/-**.

Besides the aforesaid, the claimants are also entitled to compensation, on the count of 'loss of consortium'. In this regard, reference is made to decision rendered in ***Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327***, wherein, the Hon'ble Supreme

Court, while replying upon ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130***, had concluded about the children and mother of the deceased, all to be entitled to Rs.40,000/- each towards filial and parental consortium. Also, reference is made to ***Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85***, wherein also, the Hon'ble Supreme Court had held the claimants of that case, each to be entitled to compensation, on the count of 'spousal consortium' for wife and 'parental consortium' for two children.

In ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, the extent of consortium which should be paid is stated to be Rs.40,000/- to each of the claimant and for the loss of estate, it is Rs.15,000/- as well as for the funeral expenses, it is Rs.15,000/-, which requires 10% enhancement, after a period of three years, which has since passed by. In the light of the same, the claimants, are entitled to compensation, on the count of '**loss of consortium**' to the extent of **Rs.44,000/-** each. Besides the same, they are also entitled to **Rs.16,500/-** as '**loss of estate**' and **Rs.16,500/-** as '**funeral expenses**'.

Thus, loss of dependency comes to be Rs.11,71,800/-, loss of consortium comes to be Rs.1,32,000/- (Rs.44,000/- to each of the claimant), Rs.16,500/- as loss of estate and Rs.16,500/-, as funeral expenses. Therefore, the total comes to be **Rs.13,36,800**/-.

However, learned Tribunal, on the basis of the evidence adduced, more particularly, the site plan, coming on record, with the crime detail report, had concluded about deceased Paramjeet Singh @ Manpreet @

Manu, also to be negligent to some extent i.e. to the extent of 20%. No appeal, as such, has been filed by the claimants, vis-a-vis, death of Paramjeet Singh @ Manpreet @ Manu. As such, this finding, has attained finality.

In view of the same, the claimants, vis-a-vis, death of Paramjeet Singh @ Manpreet @ Manu, are held entitled to 80% of the total compensation, as now worked upon, which comes to be **Rs.10,69,440/-**.

Out of the compensation of Rs.10,69,440/-, claimant No.1-Preeti is held entitled to 50% of the said amount, whereas, son of the deceased namely, Anirudh @ Lakshay-claimant No.2, is held entitled to 40% and Shamsher Singh-claimant No.3, who is aged person and father of the deceased is granted 10%, out of the aforesaid compensation, along with proportionate interest, as ordered by learned Tribunal.

Likewise, in the case of deceased Amit Kumar, his monthly income is taken to be Rs.5812/-, out of which, considering him to be unmarried son of their parents, deduction of 50%, ought to be made, on account of personal expenses. Making it to be so, the monthly dependency is worked upon as **Rs.5812-2906(50%)=Rs.2,906/-**.

Keeping in view the age of the deceased, which is established to be 25 years and falls in the category of 21-25 years, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition of 40% has to be made as future prospects, to the earnings, so worked upon and thus, the amount comes to be **Rs.2906+1162(40%)=Rs.4068/-** per month. Therefore, annual dependency comes to be **Rs.4068x12=Rs.48,816/-**. The suitable multiplier, as per guidelines laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation***

and anr., 2009(3) RCR (Civil) 77, is '18'. Thus, after applying the multiplier of '18', the loss of dependency comes to be **Rs.48,816x18= Rs.8,78,688/-.**

In ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, the extent of consortium which should be paid is stated to be Rs.40,000/- and for the loss of estate, it is Rs.15,000/- as well as for the funeral expenses, it is Rs.15,000/-, which requires 10% enhancement, after a period of three years, which has since passed by. In the light of the same, the claimant No.1-Rekha Devi, is entitled to compensation, on the count of '**loss of consortium**' to the extent of **Rs.44,000/-**. Besides the same, she is also entitled to **Rs.16,500/-** as '**loss of estate**' and **Rs.16,500/-** as '**funeral expenses**'.

Thus, loss of dependency comes to be Rs.8,78,688/-, loss of consortium comes to be Rs.44,000/-, Rs.16,500/- as loss of estate and Rs.16,500/-, as funeral expenses. Therefore, the total comes to be **Rs.9,55,688**/-.

Accordingly, the impugned Award dated 29.09.2017 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award shall remain the same. In view of the same, further necessary steps shall be taken by learned Tribunal.

With the above observations, both the appeals stand allowed.

August 24, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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