

FAO-866-2018 (O&M) with
FAO-4238-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on:- 26.07.2023

Pronounced on:- 22.08.2023

(1) FAO-866-2018 (O&M)

United India Insurance Company Limited

...Appellant

Versus

Komal and Others

...Respondents

(2) FAO-4238-2018

Komal and others

... Appellants

Versus

Sajid Ahmad and Others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Vinod Chaudhary, Advocate
for appellant in FAO-866-2018 and
for respondent No. 3 – Insurance Company in
FAO-4238-2018.

Mr. R.K. Agnihotri, Advocate
for the appellants in FAO-4238-2018.

Mr. Ajit Singh, Advocate for
Mr. Ankit Aggarwal, Advocate
for respondents No. 2 to 5 in FAO-866-2018.

AMARJOT BHATTI, J.

1. The appellant – United India Insurance Company Ltd. in
FAO-866-2018 has filed the present appeal for setting aside the impugned

Award dated 09.09.2017 passed by learned Motor Accident Claims

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Tribunal, Karnal, whereas, the appellants/claimants – Komal, Veena Devi and Master Aarav (through his mother Smt. Komal appellant No. 1) in FAO-4238-2018 have filed the present appeal for modification and enhancement of compensation awarded by the Tribunal as referred above. Both these appeals have arisen out of the same Award dated 09.09.2017, therefore, the appeals are taken up together for disposal.

2. The facts of the case are that Komal and others have filed claim petition under Section 166 and 140 of the Motor Vehicles Act, 1988 for grant of compensation of Rs. 1 crore alongwith interest @24% per annum on account of death of Naveen in a Motor Vehicular accident. It is submitted that at the time of accident, deceased Naveen was 24 years old and was doing the job of denting painting at Berkeley Motors Pvt. Ltd., GT Road, Karnal and earning Rs. 18,000/- from all sources. On the fateful day of 04.03.2016, deceased Naveen alongwith his companions Ravi Pasi, Rohit and Manoj were coming from Haridwar after getting *Kavar*. When they reached near Hanuman Temple before Sarsawa, District Saharanpur, a Tempo bearing Registration No. UP-11AT-1968 which was being driven in a rash and negligent manner struck with Naveen. Due to the impact, Naveen fell down on the road and received multiple and grievous injuries. Naveen was taken to Government Hospital, Saharanpur, UP, where the concerned doctor declared him dead. Due to the alleged accident, FIR No. 83 dated 05.03.2016 under Section 279, 338, 304-A of IPC was registered against respondent No. 1 at Police Station Sarsawa, District Saharanpur, UP. Hence, the claim petition.

3. The claim petition was contested by all the respondents. In the joint written statement filed by respondents No. 1 and 2, preliminary

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objections regarding maintainability, cause of action were taken. On merits, the factum of alleged accident was denied by the answering respondents. The salary of Rs. 18,000/- per month was also denied. It was submitted that a false FIR has been registered against respondent No. 1. The vehicle of the answering respondents was falsely involved in the alleged accident. It was admitted that the Tempo of answering respondents was insured with respondent No. 3. The remaining averments were denied by the answering respondents. It was prayed that the claim petition may be dismissed with costs.

4. The Insurance Company – respondent No. 3 also filed separate written reply taking the stand that claim petition was not maintainable in the present form. It was alleged that after reading the FIR and site plan, it was clear that the accident took place due to the wrong crossing of road by the deceased victim. It was further alleged that at the time of accident, no name of the driver was mentioned and later on another driver was produced, which clearly showed that there was collusion between the claimants and respondents No. 1 and 2. On merits, all the facts were denied for want to knowledge with the prayer that the claimants/petitioners may be put to strict proof of the income of deceased victim and regarding the claim for compensation. It was prayed that the claim petition filed by the petitioners may kindly be dismissed qua the answering respondent – Insurance Company. However, it was also prayed that if the Tribunal comes to the conclusion that the answering respondent is liable to pay the compensation, then in that event only 6% interest per annum may be allowed.

5. From the pleadings of the parties, following issues were

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framed by the Tribunal on 14.03.2017:-

- (1) Whether the accident took place on account of rash and negligent driving of vehicle bearing registration No. UP-11AT-1968 by respondent No. 1 resulting into death of Naveen, as alleged? OPPs*
- (2) If issue No. 1 is proved, whether claimants are entitled to any compensation, if so, to what amount and from whom? OPPs*
- (3) Whether respondent No. 1 was not holding a valid and effective driving license at the time of accident, as alleged; if so to what effect? OPR3*
- (4) Whether vehicle in question was being driven in contravention of terms and conditions of insurance policy as well as provisions of Motor Vehicles Act, if so its effect? OPR3*
- (5) Relief.*

6. In order to prove the claim petition, the petitioner No. 2 Veena Devi herself stepped into the witness box as PW-2. The petitioners/claimants further examined Ravi Passi as PW-1 and Baljeet Kumar, Accountant as PW-3. Thereafter, learned counsel for the claimants tendered documents Ex.P-4 to Ex.P-14 and Mark-A to Mark-O and closed the evidence.

7. In order to rebut the case of the petitioners/claimants, the learned counsel for respondents No. 1 and 2 had tendered documents Ex.R1 to Ex.R-6, whereas, respondent No. 3 – Insurance Company tendered documents Ex.R-7 to Ex.R-12 and closed the evidence.

8. After hearing the arguments advanced by learned counsel for all the parties, the claim petition filed by the claimants was allowed by passing Award dated 09.09.2017, as referred above.

9. Feeling aggrieved of this Award, the appeal bearing FAO No. 866 of 2018 has been preferred by appellant/United India Insurance

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been preferred by the appellants/claimants Komal and others.

I have heard the arguments of learned counsels representing the parties in both the appeals. The learned counsel for the Insurance Company has filed FAO No. 866 of 2018 challenging the quantum of compensation awarded by learned Motor Accident Claims Tribunal, Karnal. It is argued that the learned Tribunal has awarded compensation of Rs. 23,41,872/- in favour of the claimants. It was totally ignored that as per the law enunciated by the Hon'ble Apex Court and another High Courts, the Tribunal could have not granted compensation for loss of consortium beyond Rs. 40,000/-. No compensation can be awarded separately on account of loss of love and affection. Similarly, the Tribunal could have not granted compensation beyond Rs. 15,000/- on account of funeral expenditure. The learned Motor Accident Claims Tribunal, Karnal was required to award just and fair compensation. It is prayed that accordingly the award passed by the learned Motor Accident Claims Tribunal, Karnal requires modification.

10. On the other hand, the appellants/claimants have filed separate FAO No. 4238 of 2018 challenging the aforesaid Award on the ground that the compensation awarded by the learned Motor Accident Claims Tribunal, Karnal is towards the lower side. The appellants in this appeal have prayed for enhanced amount of compensation by modification of the Award passed by the learned Tribunal. It is prayed that the deceased victim was a young boy who was working as painter in Berkeley Mercedes Benz, Karnal and was getting the salary of Rs. 18,000/- per month which was duly proved on record by leading convincing evidence. Even then the learned Motor Accident Claims Tribunal, Karnal has wrongly considered

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the deceased victim as a labourer and his monthly income was taken as Rs. 9,800/- per month. Therefore, the compensation awarded by the learned Motor Accident Claims Tribunal, Karnal requires recalculation. The learned Tribunal has not awarded any compensation for loss of love and affection. The mother and wife may be granted compensation under this head to the tune of Rs. 1 lac each. The learned Tribunal has only granted Rs. 25,000/- for transportation and funeral expenditure, whereas the learned Tribunal could have taken judicial note of the fact regarding expenditure for the funeral and performing last rites and should have granted compensation to the tune of Rs. 50,000/-. The interest awarded by the learned Tribunal is only @6% per annum. Rather, the compensation amount should have been given with interest @18% per annum. The meager amount of Rs. 2200/- has been granted towards counsel fee, whereas, the average counsel charges minimum amount of Rs. 11,000/- per case in such like cases. It is prayed that the compensation awarded by the learned Motor Accident Claims Tribunal, Karnal may kindly be modified and the appellants/claimants are entitled to receive enhanced amount of compensation.

11. I have considered the arguments advanced before me. I have gone through the trial Court record carefully. Both the aforesaid appeals have been preferred only regarding the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Karnal. It is the case of appellant/insurance company that excessive amount has been awarded by the learned Motor Accident Claims Tribunal, Karnal, whereas, it is the case of appellants/claimants that inadequate amount of compensation has been awarded. It is not disputed that on 04.03.2016, the deceased victim

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Naveen Kumar alongwith his companions Ravi, Rohit and Manoj was coming from Haridwar after getting *Kavar* and when they reached near Hanuman Temple before Sarsawa, District Saharanpur, the offending Tempo bearing Registration No. UP-11AT-1968 driven rashly and negligently by Sajid Ahmad – respondent No. 1 hit Naveen by coming on the wrong side of the road, as a result of which Naveen suffered serious injuries and while he was taken to Government Hospital, Saharanpur, he succumbed to the injuries and was declared dead. The present claim application was filed by his widow Komal – claimant No. 1, widow/mother Veena Devi – claimant No. 2, his minor son Master Aarav – claimant No. 6 and three sisters Bala Rani, Naina Devi and Barkha – claimants No. 3 to 5.

The learned Motor Accident Claims Tribunal, Karnal came to the conclusion that there was no specific evidence to prove the income of deceased as Rs. 18,000/- per month, therefore, his income was assumed as Rs. 9,800/- per month by doing labour work. In the case in hand, the claimants had examined Baljeet Kumar, Accountant, Berkeley Motors Limited, Karnal as PW-3 who confirmed that Naveen son of Puran Chand was working as a Painter in their company and was getting salary of Rs. 13,000/-. He had proved on record the salary slips from December 2015 to February 2016 which are Ex.P-1 to Ex.P-3. The learned Motor Accident Claims Tribunal, Karnal has totally ignored the testimony of Baljeet Kumar, Accountant PW-3 without any justification and wrongly assumed the income of Naveen as that of a labourer to the tune of Rs. 9800/- per month. There is convincing evidence on the file to prove the specific income of late Naveen as Rs. 13,000/- per month. Therefore, the income of

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deceased was wrongly taken up by the learned Motor Accident Claims Tribunal, Karnal for calculating the quantum of compensation and it requires recalculation. By relying upon the testimony of Baljeet Kumar, Accountant PW-3 and considering the salary slips proved on file Ex.P-1 to Ex.P-3, the income of late Naveen is taken as Rs. 13,000/- per month. By relying upon the authority cited in **2013(3) CivCC 15 Supreme Court of India**, in case titled “***Rajesh and others Vs Rajbir Singh and others***”, late Naveen was getting settled income, therefore, 50% increase in income comes out to be Rs. 6500/- and his monthly income is taken as Rs. 19,500/- and annual income comes out to be Rs. 2,34,000/-. Late Naveen has left behind his widow and a minor child and apart from them, he was having widow mother and three unmarried sisters. The learned Motor Accident Claims Tribunal, Karnal deducted 1/3rd income towards personal expenditure by ignoring the sisters who were claimants No. 3 to 5. In this case, it cannot be ignored that Naveen had lost his father, therefore, even the unmarried sisters were dependent on him. Therefore, considering the number of dependents, 1/3rd income was wrongly deducted towards the expenditure of the deceased himself. Considering the number of family members, 1/4th income is deducted towards personal expenditure and the monthly dependency of the family is taken as Rs. 14,625/- and the annual income comes out to be Rs. 1,75,500/-.

The learned Motor Accident Claims Tribunal, Karnal has applied multiplier of 18 without considering the date of birth of the deceased victim. As per the Middle Standard Certificate proved on file as Ex.R-8, his date of birth is mentioned as 08.12.1988. Therefore, at the time of accident he was about 27 years of age. By relying upon the authority

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cited in 2009 ACJ 1298 Supreme Court of India, in case titled “*Smt. Sarla Verma and others Vs Delhi Transport Corporation and another*”, the multiplier of 17 is applicable to the present case and with this multiplier, the amount of compensation comes out to be Rs. 29,83,500/-.

The learned Motor Accident Claims Tribunal, Karnal has granted Rs. 2,25,000/- on account of loss of consortium, loss of love and affection as well as for transportation and funeral expenses. By relying upon the authority in case *Smt. Sarla Verma and others Vs Delhi Transport Corporation and another (supra)*, the compensation on account of untimely death of Naveen and under the other heads is granted as shown in the following table : -

SR. No.	Head	Enhanced amount of compensation (Rs.)
1.	Compensation on account of death of Naveen	29,83,500/-
2.	Loss of consortium for wife and child @Rs.44000/- each	88,000/-
3.	Loss of love and affection for mother and three sisters @Rs.20,000/- each	80,000/-
4.	Loss of estate	16,500/-
5.	Funeral expenses	16,500/-
	TOTAL	31,84,500/-

Therefore, the total amount of compensation comes out to be Rs. 31,84,500/- which the appellants/claimants are entitled to receive. As referred above, the learned Motor Accident Claims Tribunal, Karnal had already granted Rs. 23,41,872/- as compensation which is liable to be adjusted from the aforesaid amount, if already deposited, and the appellants are entitled to receive the balance amount of Rs. 8,42,628/-. The appellants are entitled to receive the enhanced amount of compensation

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with interest @7% per annum from the date of filing of present appeal till realization of the amount.

The learned Motor Accident Claims Tribunal, Karnal has awarded compensation only in favour of claimants No. 1, 2 and 6, whereas, the claim of unmarried sisters was declined. The mother was granted 30% of compensation awarded by the learned Tribunal. Since, the mother has been suitably compensated, therefore, the unmarried three sisters – claimants No. 3 to 5 are entitled to Rs. 50,000/- each and the remaining amount is awarded to Komal – claimant No. 1 and minor son – claimant No. 6 in equal shares.

In view of my above observation, the appeals preferred by the appellant - Insurance Company as well as by the appellants/claimants are partly accepted and the compensation awarded by the learned Motor Accident Claims Tribunal stands modified.

The copy of record received from the Tribunal be sent back to the concerned quarter.

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

Photocopy of this order be placed on the connected file.

22.08.2023
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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes