

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(107)

FAO-5209-2022 (O&M)

Date of Decision : February 14, 2023

New India Assurance Company Ltd.

.. Appellant

Versus

Saroj and others

.. Respondents

(107-A)

CM-18275-CII-2022 and
CM-18274-CII-2022 in/and
FAO-5536-2022

Saroj and others

.. Appellants

Versus

Jaikam and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Suman Jain, Advocate and
Mr. Rishabh Jain, Advocate, for the appellant
in FAO No.5209 of 2022 and for the respondents
in FAO No.5536 of 2022.

Mr. Balkar Singh, Advocate, for the appellants
in FAO No.5536 of 2022 and for the respondents
in FAO No.5209 of 2022.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-18275-CII-2022

This is an application under Section 5 of the Limitation Act for
condonation of delay of 30 days in filing the appeal.

Keeping in view the facts mentioned in the application, the

same is allowed and delay of 30 days in filing the appeal is condoned.

CM-18274-CII-2022

As prayed for, the application is allowed.

FAO-5209-2022 and FAO-5536-2022

By this common order, two first appeals, the details of which have been given in the heading of the order, are being decided as both the appeals arise out of the same Award of the Motor Accident Claims Tribunal, Rewari.

FAO No.5209 of 2022 has been filed by Insurance Company challenging the computation of the Award whereas, FAO No.5536 of 2022 has been filed by the claimants for enhancement of the compensation assessed by the Motor Accident Claims Tribunal, Rewari.

Certain facts needs to be mentioned to appreciate the controversy in the correct perspective.

Ajay Kumar was travelling in the bus having registration No.RJ40PA/1587 on 24.01.2017. The said bus met with an accident with a truck bearing registration No. HR38P/4620. In the accident, Ajay Kumar received grievous injuries and he ultimately scummed to those injuries and other passengers namely Ravi Kumar and Rohit, who were also travelling with Ajay Kumar, suffered grievous injuries. In respect of the said accident, an FIR No.41 dated 24.01.2017 was registered under Sections 279, 337 and 304-A of the IPC against the driver of the offending vehicle i.e. truck bearing registration No. HR38P/4620.

As Ajay Kumar had lost his life in the said accident, the dependents of Ajay Kumar filed a claim petition bearing No.205 of 2017 before the Motor Accident Claims Tribunal Rewari. The other claim

petitions were filed by the other injured persons also so as to claim compensation for the injuries they have suffered.

The Tribunal after appreciating the facts came to the conclusion that the accident occurred due to the rash and negligent act of driving of the by the driver of vehicle No. RJ40PA/1587, which has resulted into the death of Ajay Kumar and has caused grievous injuries to the other passengers and awarded compensation to the claimants in the claim petition No.205 of 2017 filed by the claimants.

Keeping in view the evidence, which had come on record, the income of the deceased Ajay Kumar was assessed at Rs.35,119/- and the Tribunal assess the total compensation admissible to the claimants to be Rs.59,81,968/-. The said findings of the Tribunal are under challenge in the present appeal preferred by the Insurance Company on the ground that the compensation awarded is not in accordance with law and by ignoring certain aspects whereas the claimants have approached this Court to enhance the compensation.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned counsel appearing on behalf of the Insurance Company in FAO No.5209 of 2022 argues that in the present case, the fixation of monthly salary is not based upon the evidence as nothing has come on record to show that the monthly income of the deceased was Rs.35,119/-. Learned counsel for the appellant-Insurance Company submits that mere pay slip cannot be treated as evidence to record the finding that the deceased was earning the amount mentioned in the said pay slip without there being corroboration by independent evidence.

The said argument cannot be accepted for the reason that once it is established that the deceased was employed with a particular institution and the said institution was paying a particular amount to the deceased and the evidence of the payment of the said amount has been proved by placing on record the pay slip which gives the details as to how much amount the deceased was getting per month, the same need not to be corroborated further as strict rules of evidence are not to be applied with for arriving at a conclusion while adjudicating a claim of a claimant under Motor Vehicles Act. Hence, from the Award, it is clear that the reasons given by the Tribunal to arrive at the conclusion that the income of the deceased was Rs.35,119/- is based upon the evidence, which has come on record and the plea of the appellant-Insurance Company that the pay slip should have been corroborated by other evidence, cannot be accepted. It may be noticed that even the accident, where deceased was employed, was examined and he had supported the pay slip to prove the income of the deceased employee which fact has gone un-rebutted.

Learned counsel appearing on behalf of the appellant-Insurance Company submits that even in the pay slip, the net pay admissible to the deceased was mentioned as Rs.32060/- but keeping in view the work done by him in a particular month keeping in view the rules governing the service, he was paid Rs.35,119/-, which additional amount was the pay restricted only to certain months and not for whole of the year.

Though, the said argument has been raised but learned counsel for the appellant has failed to point out any evidence on record to show that the pay slip, which depicted the pay of the deceased at Rs.35,119/- is only restricted to certain months and not for whole of the year. In the absence of

any evidence to the contrary brought to the notice of this Court, the bald argument being raised cannot be accepted.

Learned counsel for the Insurance Company further submits that the respondent-claimant namely Saroj in her cross-examination had submitted that she has got certain compensation from the Department after the death of her husband which amount should have been deducted while awarding the compensation.

Though the said statement has been made by the wife of the deceased but nothing has come on record whether, the said compensation was due to the death or the said was only in respect of the service rendered by the deceased employee. Nothing has come on record that any death compensation was paid by the company where the deceased was employed though, it has come on record after the death, in respect of the service rendered by the deceased that certain benefits admissible to the family in respect of the service rendered by the deceased have been paid. In the absence of any cogent evidence, in regards to any death compensation been paid, the argument being raised by the learned counsel for the appellant, cannot be accepted as the same has not been supported by any evidence on record.

Learned counsel for the appellants in FAO No.5536 of 2022 argues that though, the salary of the deceased employee has been ascertained in accordance with law but while calculating the compensation, the total compensation arrived at is incorrect as calculation mistake have been made by the Tribunal while assessing the total compensation admissible to the claimants.

Learned counsel for the respondents-Insurance Company in FAO No.5536 of 2022 is not able to rebut that there are calculation mistakes by the Tribunal with regard to the total compensation for which the claimants are entitled for in case, the income and other aspects are upheld by this Court.

Learned counsel for the appellants-claimants in FAO No.5536 of 2022 submits that keeping in view the income assessed and other aspects on which the claimants are entitled for compensation, the total compensation for which the claimants will be entitled for, is as under:-

Income Assessed	35,119/- per month
Yearly income	35,119 x 12 = 4,21,428/- per annum
Tax deduction @ 5%	21,071.4
Income after tax deduction	4,21,428-21,071= 4,00,357/-
Future prospects 40%	4,00,357+40% (1,60,142) = 5,60,500/-
1/4 th personal deduction	5,60,500-1/4 th (1,40,125/-)
Total	4,20,375/-
Multiplier of 16	4,20,375x16= 67,26,000/-
Conventional Head	70,000/-
Total Compensation	67,26,000+70,000 = 67,96,000

Learned counsel for the appellant-Insurance Company in FAO No.5209 of 2022 does not dispute the said factual aspect.

Keeping in view the above, the Award of the Motor Accident Claims Tribunal dated 04.07.2022 is modified to the extent that the claimants will be entitled for the compensation of Rs. 67,96,000/- instead of Rs.59,81,968/-. Rest of the benefits qua interest upon the compensation will remain the same as extended by the Tribunal in the impugned Award.

FAO No.5209 of 2022 filed by the Insurance Company is dismissed and FAO-5536 of 2022 filed by the claimants is allowed to the

extent indicated hereinbefore.

CM-17375-CII-2022

As the main appeal i.e. FAO No.5209 of 2022 is dismissed,
present application also stands dismissed.

A photocopy of this order be placed on the file of other
connected case.

February 14, 2023

harsha

**(HARSIMRAN SINGH SETHI)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No