IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Reserve: 10.05.2023
Date of pronouncement: 19.05.2023.

1. <u>FAO-214-2019</u>

Smt. Roshni ....Appellant.

VERSUS

Ajmer and others ....Respondents.

2. <u>FAO-797-2019</u>

Shyamwati and others ....Appellants.

VERSUS

Ajmer and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Argued by: Mr. Arun Singal, Advocate
for the appellant.

Mr. Vivek K. Thakur, Advocate
for respondents No.1 and 2.

Mr. Sandeep Suri, Advocate for
respondent No.3-Insurance Company.

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<u>Sukhvinder Kaur, J.</u>

This order shall dispose of **FAO-214-2019 (Roshni Vs. Ajmer and others)** and **FAO-797-2019 (Shyamwati and others Vs. Ajmer and others)** as both the appeals have arisen from a common award dated 15.05.2018.

2. Instant appeals have been filed by the appellants-claimants for modification of award dated 15.05.2018 passed by the Motor Accident

Claims Tribunal, Panipat, whereby the claim petitions filed by the appellants-claimants were partly allowed and claimants Shyamwati and others were awarded a compensation of Rs.3,76,800/- along with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization on account of death of Jai Singh in MACP No.198 of 2016, in a motor vehicular accident that took place on 12.02.2016, whereas appellant Roshni and proforma respondent No.4-Manju were awarded a compensation of Rs.8,26,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization, on account of death of Pawan in MACP No.163 of 2016, in the above said accident.

3. The relevant facts are that the appellants-claimants filed claim petitions invoking the provisions of Section 166/140 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation with the averments that on 12.02.2016 at about 8.30 A.M., Ram Niwas son of Jai Singh (since deceased) with his sister Guddi was going to village Sushana for some personal work in a separate vehicle and his father Jai Singh, his aunt, Pawan son of Dharam Pal, Dilbag and Rajesh were going ahead of them in car Swift Dezire bearing registration No.HR-06AB-2689. When they reached in front of Radha Swami Satsang Bhawan, Rohat, one Eicher Canter bearing registration No.HR-42D-0223, being driven by respondent No.1-Ajmer in a rash and negligent manner and a very high speed, came from opposite side and hit the above said car. Due to the collision, appellants-claimants sustained multiple injuries on their persons, who were shifted to Civil Hospital, Panipat where Jai Singh was declared dead by the

doctor. On the statement of Ram Niwas FIR No.52, dated 12.02.2016, under Sections 279/304-A IPC was registered at Police Station, Sadar, Sonepat against the said driver.

4. It has been averred in the claim petition filed by the claimant Roshni that deceased Pawan was having very good health and was about 22 years old. He was student of Ist year in Polytechnic and was studying in Shri Ram Polytechnic College, Panipat. He used to take tuitions and was earning Rs.15,000/- P.M. He was a laborious person and used to contribute his entire income towards the claimant and the claimant was totally dependant upon the income of the deceased. With the untimely death of deceased Pawan, future of the claimant has become dark. He was the sole bread earner of the family. The claimant has also suffered great mental shock, pain and agony due to his untimely death and the claimant who is mother of deceased has been deprived of his love and affection. The claimant had spent Rs.50,000/- on his last rites and ceremonies.

5. It has been averred in the claim petition filed by the claimants Shyamwati and others that her deceased husband Jai Singh, was having good health prior to the accident and was about 59 years old. He was running a milk dairy and was earning Rs.15,000/- P.M.. He was a laborious person and used to contribute his entire income towards the claimants. Shyamwati is his widow and claimants No.2 to 12 are children of Jai Singh and they were totally dependant upon the income of the deceased. Deceased was the only bread earner of the family. Apart from the financial loss they have suffered great mental shock, pain and agony due to the untimely death

of deceased Jai Singh. The claimants have spent Rs.50,000/- on his last rites and ceremonies. They have been deprived of love and affection of the deceased which cannot be compensated in terms of money.

6. Appellants-claimants Shyamwati and others filed CIS No.MACP/198/2016 seeking compensation to the tune of Rs.25,00,000/- on account of death of Jai Singh, whereas appellant/claimants Roshni and Manju filed CIS No.MACP/163/2016 seeking compensation to the tune of Rs.25,00,000/- on account of death of Pawan.

7. The driver-Ajmer, owner-Krishan Kumar as well as insurer-United Insurance Co. Ltd. were impleaded as respondents in the claim petitions. Respondents No.1 and 2 contested the petitions by raising objections regarding the maintainability of the petition, locus standi and non-joining of necessary parties etc. On merits factum of accident was denied and it was stated that no accident had taken place on account of rash and negligent driving of respondent No.1. It was further stated that the offending vehicle was insured with respondent No.3 and respondent No.1 was holding a valid and effective driving license on the date of alleged accident.

8. Respondent No.3-Insurance Company also raised objections and filed its separate written statement taking preliminary objection including violation of terms and conditions of insurance policy. On merits, age, income and occupation of Jai Singh (since deceased) and Pawan (since deceased) as well as date, time and place of accident were specifically denied. It was further stated that false FIR had been lodged to extract

money and that respondent No.1 was not holding a valid and effective driving license to drive the offending vehicle at the time of accident.

9. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

10. After considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the claim petition bearing CIS No.MACP/198/2016 and awarded a sum of Rs.3,76,800/- as compensation to the appellants alongwith interest at the rate of 7.5% per annum and Rs.8,26,000/- along with interest at the rate of 7.5% per annum in CIS No.MACP/163/2016, from the date of filing the petition till realization. Respondents No.1 to 3 were held jointly and severally liable to pay the compensation.

11. Feeling dissatisfied with the award dated 15.05.2018, the appellants-claimants have preferred the instant appeals.

12. I have heard learned counsel for the parties and have also perused the relevant record.

13. Learned counsel for the appellant-claimant Roshni in FAO-214-2019 has contended that the Tribunal has assessed income of deceased Pawan as Rs.5,000/- P.M. which is on the lower side. He has further contended that that the rate of interest that has been given @ 7.5% on the compensation from the date of filing of the claim petition till realization is also liable to be enhanced to 12% P.A and is quite on the lower side and has prayed that the present appeal may be accepted and award of the Tribunal

may be modified accordingly.

14. Learned counsel for the appellants-claimants Shyamwati and others in FAO-797-2019 has contended that the Tribunal has assessed income of deceased Jai Singh as Rs.4,000/- P.M. which is quite on the lower side. The Tribunal has wrongly held appellant No.1 to be the only dependant on the deceased and has wrongly applied a cut of 50% for the personal expenses. It has been overlooked that claimant No.9 the unmarried daughter of deceased was also dependant upon him and is yet to be married. The Tribunal has also erred in not calculating the future prospects to assess the compensation qua death of Jai Singh. He has also argued that the rate of interest that has been given @ 7.5% on the compensation from the date of filing of the claim petition till realization is also liable to be enhanced to 12% P.A and has prayed that the present appeal may be accepted and award of the Tribunal may be modified accordingly.

15. On the other hand, it has been contended by learned counsel for the respondents that the Tribunal has rightly assessed the just compensation qua death of both deceased Pawan and Jai Singh. He has contended that as the income and occupation of both the deceased had not been proved so Tribunal has rightly taken their notional income by presuming them to be the daily wagers. He has further contended that while assessing the compensation qua death of Jai Singh, the Tribunal has rightly deducted 1/2 of the income of the deceased towards personal expenses as only his widow was dependant upon the deceased and claimants No.2 to 11 are major and are earning their livelihood so they cannot be taken to be

dependants upon deceased. He has also contended that as deceased was 60 years old so no future prospects are to be added to the income of the deceased. He has contended that as fair and just compensation has been awarded by the Tribunal so the award passed by the Tribunal does not call for any interference.

16. There is no dispute with regard to finding on issue No.1 regarding the manner of happening of the accident in question as has been alleged by the claimants in which both Pawan and Jai Singh had died.

FAO-214-2019

17. As per appellant/claimant Roshni her deceased son Pawan was bachelor. He was about 22 years old and was student of Ist year at Shri Ram Polytechnic College, Panipat. He used to take tuitions and was earning Rs.15,000/- P.M. Claimant Roshni has herself stepped into witness box as PW2 and in her affidavit Ex.PW2/A tendered in her examination in chief, she has deposed on oath, all averments as made in the claim petition however in her cross-examination she has admitted that she was not having any documentary proof regarding income of her deceased son.

18. The Tribunal while taking note of the fact that the accident had taken place in the year 2016 and income of deceased had not been proved, has taken the income of deceased Pawan as Rs.5,000/- P.M. Thus, in the absence of any evidence regarding specific income and occupation of deceased Pawan, his income has been rightly taken to be Rs.5,000/- P.M. by the Tribunal. In this manner, his annual income comes to Rs.60,000/- (Rs.5,000x12). As per the postmortem report Ex.P6, deceased Pawan was

aged about 22 years on the date of the accident. Keeping it in view and also keeping in view statement of his mother Roshni that deceased was 22 years old at the time of his death in the accident, the age of the Pawan has rightly been taken as 22 years by the Tribunal. As deceased has left behind claimant Roshni, his mother, who was dependent upon him and claimant No.2 Manju her married sister, who was not dependant upon him, so deduction of 1/2 of the income towards the personal expenses of the deceased has rightly been made by the Tribunal. After deducting 1/2 of the total income of deceased towards personal expenses the annual income comes to Rs.30,000/-.

19. As per the ratio of law laid down by the Hon'ble Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi, 2017(4) RCR (Civil) 1009,*** 40% of addition in the established income of deceased was required to be made regarding future prospects, so this addition of 40% in the income of deceased Pawan has been rightly made by the Tribunal. After making addition of 40% in the annual income, the income of deceased comes to Rs.42,000/- (Rs.30,000/- + Rs.12,000/-).

20. In view of the age of the deceased to be 22 years, the Tribunal has rightly applied multiplier of '18' and has rightly held that the total loss of dependency in this way come to Rs.7,56,000/- (Rs.42,000 x 18).

21. So the total loss of dependency has rightly been reached at by the Tribunal and it does not call for any interference.

22. Besides that the Tribunal has awarded Rs.15,000/- towards last rites and funeral expenses, Rs.50,000/- for loss of love and affection and

Rs.5,000/- as transportation charges and in this manner after adding the same the compensation has been assessed as Rs.8,26,000/-.

23. But nothing has been awarded to the claimant under the head of loss of estate and as per **Pranay Sethi (**supra) claimant is entitled to get compensation for loss of estate to the tune of Rs.15,000/- and after adding the said amount the total compensation that is to be granted to claimant Roshni qua death of her son Pawan comes to Rs.8,41,000/-.

24. The rate of interest of 7.5 % that has been awarded by the Tribunal appears to be reasonable and is not to be increased. Thus claimant Roshni will be entitled to compensation of Rs.8,41,000/- along with interest @ 7.5% P.A. from the date of filing of the claim petition till its realization. Accordingly, the appeal i.e. FAO-214-2019 is partly allowed.

Pending applications, if any, shall also stand disposed of.

FAO-797-2019

25. As per claimants Shyamwati and others, deceased Jai Singh was running a milk dairy and was earning Rs.15,000/- P.M. Claimant Shyamwati herself has appeared as PW3 and in her affidavit Ex.PW3/A tendered in her examination in chief, she has deposed on oath as per the averments made in her claim petition. However, in her cross-examination, she has admitted that she had not brought any record of milk dairy of her husband. She has also categorically admitted that she is not having any documentary proof qua income of her deceased husband. She has also stated that claimants No.9 and 12 are unmarried and remaining claimants are married and are living with their families separately.

26. By considering the fact that there was no proof of income, of deceased and the accident had taken place in the year 2016, while considering him as an unskilled labour, income of deceased Jai Singh has been taken as Rs.4,000/- P.M. by the Tribunal. Even if the deceased has been considered as an unskilled labour, the income of Rs.4,000/- that has been taken by the Tribunal appears to be on the lower side which is enhanced to Rs.5,000/- P.M. and thus the annual income of the deceased comes to Rs.60,000/- (Rs.5,000x12).

27. By considering the fact that the remaining claimants-children of deceased are in the age group of 30-33 years, the Tribunal has held that they cannot be presumed to be dependants upon their father, so only Shyamwati the widow of deceased has been taken as dependant upon the deceased and accordingly the deduction of 1/2 of income of deceased has been made towards his personal and living expenses.

28. But it has not been taken note of, by the Tribunal that while appearing as PW3, Shyamwati has categorically stated that his children claimants No.9 and 12 are unmarried. Though age of claimant No.12 has been mentioned as 30 years, who is son of deceased, the age of claimant No.9, who is unmarried daughter of deceased has not been mentioned in the claim petition. Otherwise also, claimant No.9 being unmarried daughter is supposed to be dependant upon her deceased father till she got married. As she is unmarried, so deceased was supposed to perform her marriage, being her father and as such it cannot be presumed that she was not dependant upon deceased even being the unmarried daughter. As such, the deduction

of 1/2 out of income of deceased has been erroneously made towards the personal expenses of the deceased and rather deduction of $1/3^{rd}$ of income of the deceased is to be made towards the personal expenses. So after deducting $1/3^{rd}$ of the annual income towards the personal expenses of the deceased, the annual income of deceased comes to Rs.40,000/- (Rs.60,000 – 20,000).

29. There is no dispute regarding the fact that deceased was 60 years of age at the time of his death in the accident, so as per law laid down in **Pranay Sethi (**Supra), future prospects to the extent of 10% of the income of the deceased were to be added, which has not been done by the Tribunal. So after adding 10% towards the future prospects, the annual income of deceased comes to Rs.44,000/- (Rs.40,000+4,000).

30. Keeping in view the age of deceased to be 60 years, the multiplier of '9', is to be applied in the present case. So after applying the multiplier of '9', the total dependency comes to Rs.3,96,000/- (Rs.44,000x9).

31. Besides that the Tribunal has awarded Rs.40,000/- towards loss of consortium, Rs.15,000/- towards expenses incurred on last rites etc. and Rs.5,000/- towards the transportation charges. As per **Pranay Sethi (**Supra), claimants were also entitled to Rs.15,000/- under the head of loss of estate. So after adding Rs.15,000/- more towards loss of estate, the total compensation that is to be granted in this case comes to Rs.4,71,000/-.

32. However, the rate of interest that has been granted @ 7.5% P.A. is just and reasonable and is not being increased. So the claimants will

be entitled to compensation of Rs.4,71,000/- along with interest @ 7.5% P.A. from the date of filing of the claim petition till its realization.

33. Out of this amount of compensation, claimant No.9-Guddi the unmarried daughter of deceased will be entitled to the amount of Rs.1,00,000/- and claimant Shyamwati widow of deceased will be entitled to the remaining amount of the compensation. Accordingly, the appeal i.e. FAO-797-2019 is partly allowed.

Pending applications, if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

19.05.2023
komal

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