IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 23.01.2024
Pronounced on: 08.02.2024

1. FAO-282-2019 (O&M)

NARINDER KAUR AND OTHERS …. Appellants

Versus

RANJIT SINGH AND OTHERS …. Respondents

2. FAO-2144-2019 (O&M)

KRISHNA DEVI …. Appellant

Versus

RANJIT SINGH AND OTHERS …. Respondents

3. FAO-2009-2019 (O&M)

UNITED INDIA INSURANCE COMPANY LIMITED …. Appellant

Versus

NARINDER KAUR AND OTHERS …. Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

IN FAO-282-2019

Present: Mr. Vansh Chawla, Advocate for the appellants.

Mr. Avtar Singh Bhatti, Advocate
for respondents No.1 and 2.

Mr. R.K. Bashamboo, Advocate
for respondent No.3-Insurance Company.

Mr. Satbir Rathore, Advocate for respondents No.4 and 5.

IN FAO-2144-2019

Present: Mr. Satbir Rathore, Advocate for the appellant.

Mr. R.K. Bashamboo, Advocate
for respondent No.3-Insurance Company.

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Service of respondents No.1, 2, 4 to 6 dispensed with vide order dated 22.11.2019.

IN FAO-2009-2019

Present: Mr. R.K. Bashamboo, Advocate for the appellant.

Mr. Vansh Chawla, Advocate for respondent No.1 to 3.

Mr. Avtar Singh Bhatti, Advocate for respondents No.4 and 5.

Respondents No.6 and 7 proceeded *ex parte* vide order dated 21.11.2019.

ALKA SARIN, J.

1. The present appeals have been preferred by the claimants as well as the Insurance Company aggrieved by the award dated 08.10.2018 passed by the Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'the Tribunal'). FAO-282-2019 has been preferred by the wife and the minor children of the deceased aggrieved by the quantum of compensation awarded. FAO-2144-2019 has been preferred by the parents of the deceased,again aggrieved by the amount of compensation awarded to them by the impugned award. FAO-2009-2019 has been preferred by the Insurance Company aggrieved by the award on multiple counts.

2. In FAO-2144-2019 there is an application being CM-6560-CII-2019 for condonation of delay of 24 days in filing the appeal. For the reasons stated in the application, the same is allowed and the delay of 24 days in filing the appeal is condoned. In the appeal preferred by the Insurance Company first being FAO-2009-2019, there is an application being CM-6184-CII-2019 for condonation of delay of 24 days in refiling

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the appeal. For the reasons stated in the application, the same is allowed and the delay of 24 days in refiling the appeal is condoned.

3. The brief facts relevant to the present case are that the deceased, Ravi Kumar, along with his brother, namely, Ashok Kumar and father-in-law, namely, Joginder Singh, was coming from Hoshiarpur and going to Village Choka. The deceased was alone on his Pulsar motorcycle bearing registration No.PB-07-Y-1202 and the brother of the deceased and the father-in-law of the deceased were coming behind him on a scooter. When they reached near Village Gondpur then from the front side one truck bearing registration No.PB-19-B-0329, which was being driven in a rash and negligent manner at a high speed, without blowing any horn, came from Dasuya side and struck against the deceased and dragged him due to which the deceased suffered multiple serious injuries on his body including head. Resultantly, he succumbed to his injuries. It was averred in the claim petition that respondents No.4 and 5 were not dependent upon the deceased during his lifetime because Tarsem Singh, the father of the deceased, had retired from the Indian Army as Hawildar and was getting a handsome pension which was sufficient for them to make their ends meet. FIR No.62 dated 10.11.2012 was registered under Sections 279, 304-A, 427 IPC registered at Police Station Garhdiwal.

4. In the claim petition it was alleged that at the time of accident the deceased was 37 years of age and was serving in the Indian Army and at the time of the accident he was serving on the Post of Nk./MT and was posted in B Company REAR 557 ASC Bn, C/o 99 APO State Manipur and on the date of the accident he was proceeding on leave

AMAN JAIN
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from 27.10.2012 to17.11.2012 and was drawing a salary of Rs.35,000/- per monthand still had service of about 7 yearsleft. Upon notice the respondents No.1 and 2 appeared and filed their joint written statement taking the preliminary objection regarding maintainability. On merits it was stated that no accident took place and that the deceased might have received some injuries due to some other reason. Respondent No.3 (Insurance Company) appeared through counsel and filed written statement taking preliminary objections regarding maintainability, invalid driving license, the vehicle was plying without fitness certificate and route permit, collusion between the claimants and respondents No.1 and 2. Respondents No.4 and 5 appeared and filed their joint written statement wherein they stated that they were also dependent upon the income of the deceased (Ravi Kumar) as they are the father and the mother of the deceased and the deceased used to give Rs.20,000/- per month to them and that they have no other source of income.

5. From the pleadings of the parties the following issues were framed:

1. Whether death of Ravi Kumar took placein road accident on 09.11.2012 caused due to rash and negligent driving of Truck No.PB-19-B-0329 by respondent No.2 as alleged. If so its effect ?OPP
2. lf issue No.1 proved, to what amount of compensationclaimants entitled and from whom ?OPP

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2024.02.08 02:09
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3. Whether respondent No.1 was not holding valid andeffective driving licence and offending vehicle was nothaving route permit registrationcertificate and fitness certificate at the time of accident. If so its effect ? OPR-3

4. Whether claim petitionbad due to non-joinderof necessary parties. If so its effect ?OPR-3

5. Relief

6. The Tribunal decided issue No.1 in favour of the claimants and against the respondents. On issue No.2 the Insurance Company was held liable to pay the claim amount. Issue No.3 was also decided against the Insurance Company. No evidence was led on issue No.4. The Tribunal awarded the following compensation which was to be apportioned in the following manner:

Sr. No.	Head	Calculations
1.	Salary	Rs.31,589/- P.M.
2.	1/3rd of (1) deducted as personal expenses of deceased	Rs.21,020/- (Rs.31,589/- - Rs.10,529/-)
3.	Annual income	Rs.2,52,720/- (Rs.21,020/- x 12)
4.	Compensation after multiplier 15 as applied	Rs.37,90,800/- (Rs.2,52,720/- x 15)
5.	Loss of consortium, love and affection	Rs.55,000/-
6.	Funeral expenses	Rs.15,000/-
7.	Total	Rs.38,60,800/-

The aforesaid compensation is to be apportioned as under:

1.	Claimant No.1 (Widow of the deceased)	Rs.10,60,800/-
2.	Claimant No.2 (Minor daughter of the deceased)	Rs.12,00,000/-

AMAN JAIN
2024.02.08 02:09
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3.	Claimant No.3 (Minor son of the deceased)	Rs.12,00,000/-
4.	Respondent No.4 (Father of the deceased)	Rs.2,00,000/-
5.	Respondent No.5 (Mother of the deceased)	Rs.2,00,000/-

7. Aggrieved by the award the claimants being the wife and children of the deceased and the parents of the deceased have preferred two separate appeals being FAO-282-2019 and FAO-2144-2019 while the Insurance Company has preferred FAO-2009-2019.

8. Learned counsel for the Insurance Company has contended that in the present case the author of the FIR was not examined and hence the factum of the accident cannot be held to having been proved. It was further the argument of the learned counsel that though the father-in-law had appeared in the witness box, however, he did not prove the accident and that the FIR was also based on hearsay. It was submitted that there was infact no eye-witness and the alleged eye-witnesses were introduced at a later stage which was apparent from the fact that the claimant, Narinder Kaur, stated in her statement that her father and brother came to the hospital later on. Learned counsel for the Insurance Company has also contended that the driving licence was not valid and that the driver hailed from Himachal Pradesh and the driving licence was got made from Nagaland.

9. Per contra, learned counsel for the claimants has contended that the father-in-law was cross-examined at length and in detail and nothing could be elicited from him to show that the accident did not take place. It was further the contention of the learned counsel that the driver in the present case did not step into the witness box and hence it cannot be

AMAN JAIN
2024.02.08 02:09
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said that the accident was not proved. It is also submitted that the cross-examination of the father-in-law was conducted and it has come on the record that he was present at the time of the accident. The learned counsel for the claimants has further contended that there is nothing on the record to show that the driving license being held by the driver was invalid and that getting a driving licence issued from a place other than the home state was not a prohibited.

10. I have heard the learned counsel for the parties.

11. In the appeal filed by the Insurance Company the argument raised by the learned counsel that the witnesses were introduced at a later stage deserves to be rejected inasmuch as merely because the author of the FIR did not step into the witness box it cannot be inferred that there was no eye-witness. The father-in-law of the deceased, who is stated to being one of the eye-witnesses, stepped into the witness box and was put through a lengthy cross-examination and nothing could be elicited from him to show that the accident did not take place. Rather, the driver in the present case chose not to appear in the witness box. The argument of the learned counsel for the Insurance Company that the driver was not holding a valid driving license also deserves to be rejected in the absence of any evidence. In view of the above, the appeal filed by the Insurance Company being FAO-2009-2019 is dismissed.

12. Coming to the two appeals filed by the claimants i.e. the wife and children of the deceased(FAO-282-2019) and by the parents of the deceased (FAO-2144-2019), learned counsel for the claimants would contend that though the income has rightly been assessed, however, a

AMAN JAIN
2024.02.08 02:09
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deduction of 1/3rd has wrongly been made and the deduction ought to have been 1/4th. Further, no amount has been added towards future prospects and hence 50% addition has to be made towards future prospects. Further, the learned counsel for the claimants would contend that the amount awarded under the conventional heads and under the head loss of consortium is also on the lower side.

13. Learned counsel appearing on behalf of the mother of the deceased would contend that the amount of compensation awarded ought to have been disbursed equally amongst the claimants inasmuch as she is also a Class-I heir of the deceased.

14. Per contra, learned counsel for the Insurance Company has contended that sufficient amount has already been awarded and there is no scope for any enhancement.

15. In the present case the income has rightly been assessed, however, the deduction ought to have been 1/4th. Further, no amount has been awarded towards future prospects. Keeping in view the age of the deceased 50% is added towards future prospects. Multiplier has rightly been applied, however, the amounts awarded under the conventional heads and under the head consortium are on the lower side. In view thereof, the claimants are awarded Rs.15,000/- plus 20% increase towards loss of estate; Rs.15,000/- plus 20% increase towards funeral expenses and Rs.40,000/- plus 20% increase towards loss of consortium. The wife would be entitled to spousal consortium, the two minor children are entitled to parental consortium and the parents would be entitled to filial consortium. The amount in excess of and over and above the amount

AMAN JAIN
2024.02.08 02:09
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awarded by the Tribunal shall also attract interest @ 6%per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be equally apportioned between the wife, children and the mother. The father will be entitled to filial consortium as noted above. In view thereof the reworked compensation is as under:

Sr. No.	Head	Calculations
1.	Salary	Rs.31,589/- P.M.
2.	Annual Income (31,589 x 12)	Rs.3,79,068/-
3.	Deduction 1/4th of 3,79,068	Rs.2,84,301/- (Rs.3,79,068/- - Rs.94,767/-)
4.	Future prospects 50%	Rs.4,26,452/- (50% of Rs.2,84,301/-)
5.	Multiplier 15	Rs.63,96,780/- (15 x Rs.4,26,452/-)
6.	Loss of estate (15,000 plus 20% increase)	Rs.18,000/-
7.	Funeral expenses (15,000 plus 20% increase)	Rs.18,000/-
8.	Loss of consortium (i) Parental (Rs.48,000 x 2) (ii) Filial (Rs.48,000 x 2) (iii) Spousal (Rs.48,000 x 1)	 Rs.96,000/- Rs.96,000/- Rs.48,000/-
9.	Total	Rs.66,72,780/-
10	Amount awarded by the Tribunal	Rs.38,60,800/-
11.	Enhancement	Rs.28,11,980/-

16. In view of the above, the appeals filed by the claimants stand allowed and the impugned award is modified accordingly and the appeal filed by the Insurance Company is dismissed. Pending applications, if any, also stand disposed off.

08.02.2024 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE : *Whether speaking/non-speaking: Speaking*
Whether reportable: YES/NO

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2024.02.08 02:09
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