

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

653-1

FAO No.3324 of 2012
Date of Decision : 01.02.2024

Bajaj Allianz General Insurance Co. Ltd.Appellant
VERSUS
Pushpa Rani and OthersRespondents

653-2

FAO No.4025 of 2012

Pushpa Rani and OthersAppellants
VERSUS
Satish Kumar and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajneesh Malhotra, Advocate
for the appellant in FAO-3324-2012 and
for respondent No.5 in FAO-4025-2012.

Mr. Jai Bhagwan, Advocate
for the appellants in FAO-4025-2012 and
for respondent Nos.1 to 4 in FAO-3324-2012.

Mr. R.C. Gupta, Advocate
for respondent No.8 in FAO-3324-2012 and
for respondent No.4 in FAO-4025-2012.

ALKA SARIN, J. (Oral)

1. This common order will dispose off both the above captioned appeals being FAO-3324-2012 filed by the Insurance Company and FAO-4025-2012 filed by the claimants challenging the award dated 19.12.2011 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the ‘Tribunal’).

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.

FAO-3324-2012

3. The Insurance Company has preferred the present appeal aggrieved by the award to the extent that it was a case of contributory negligence and that since it was a head on collision, 50% of the amount of compensation awarded by the Tribunal ought to have been deducted towards contributory negligence.

4. Learned counsel for the Insurance Company has stated that since it was a head on collision, it was a clear case of contributory negligence and hence the Tribunal has erred in not deducting 50% of the amount of compensation awarded by it towards contributory negligence.

5. *Per contra* learned counsel for the claimants has contended that in the present case the argument qua contributory negligence was not raised before the Tribunal and that the driver even did not step into witness-box in the present case and hence there is no question of contributory negligence.

6. I have heard learned counsel for the parties.

7. In the present case the plea qua contributory negligence was not raised by the Insurance Company before the Tribunal. There is not a whisper in the impugned award passed by the Tribunal qua the plea of contributory negligence having been raised. Further still, the driver, who could have possibly deposed as to whether it was a case of contributory negligence, did not step into the witness-box.

8. In view of the above the appeal (FAO-3324-2012) filed by the Insurance Company Bajaj, being devoid of any merits, is dismissed.

FAO-4025-2012

9. The present appeal has been filed by the claimants aggrieved by the quantum of compensation awarded by the Tribunal.

10. The Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.15,770/-
2	Annual income	[Rs.15,770 x 12] = Rs.1,89,240/-
3	Amount after applying deduction 1/4 th	Rs.1,41,960/-
4	Multiplier of 15	[Rs.1,41,960 x15] = Rs.21,29,400/-
5	Loss of estate	Rs.5,000/-
6	Funeral expenses	Rs.5,000/-
7	Loss of consortium	Rs.5,000/-
	Total Compensation	Rs.21,44,400/- (rounded off to Rs.21,44,500/-)
	Interest	7.5% per annum

11. Learned counsel for the claimants would contend that the Tribunal has taken the salary of the deceased as Rs.15,769/- per month, rounded off to Rs.15,770/- per month, though his salary was Rs.23,106/-. Learned counsel for the claimants would further contend that the Tribunal has deducted 30% from the salary of the deceased towards income tax, however, the income tax slab at the relevant point of time was 10%. It is further the contention that the amount awarded under the heads loss of estate, funeral expenses and loss of consortium is also on the lower side. In support of his contention learned counsel for the claimants has relied upon judgments of the Hon’ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias**

Chuhru Ram & Ors. [(2018) 18 SCC 130] and N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642].

12. *Per contra* learned counsel for the Insurance Company has contended that sufficient amount of compensation has been awarded to the claimants and there is no scope of any further enhancement. Learned counsel for the Insurance Company has also contended that income tax from the salary of the deceased has rightly been deducted as 30%. It has further been contended that wife of the deceased has got the appointment on compassionate ground.

13. Heard.

14. In the present case the deceased was working as an Excise Inspector and his income was Rs.23,106/- per month, his salary certificate was having been duly proved. The income tax slab in the year 2009 was 10% and hence the Tribunal has erred in deducting 30% towards income tax. After deducting 10% income tax from the salary of the deceased his income is assessed as Rs.22,046/- per month. The deduction towards dependency as $\frac{1}{4}^{\text{th}}$ and the multiplier of 15 have rightly been applied by the Tribunal. However, no addition was made towards loss of future prospects. Since the deceased in the present case was a salaried person and hence keeping in view his age and as per the law laid down in the case of **Pranay Sethi** (supra), 50% addition ought to have been made towards loss of future prospects. Under the conventional heads, the claimants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses as per the law laid down in the cases of **Pranay Sethi** (supra) and **N. Jayasree** (supra).

The claimants would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium. The argument of the learned counsel for the respondent regarding employment of the wife of the deceased deserves to be rejected for the reason that merely because the widow was given a compassionate appointment would be no ground to dismiss the claim petition.

15. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.23,106/-
2	Annual income	[Rs.23,106 x 12] = Rs.2,77,272/-
3	Annual income minus income tax @ 10% i.e. Upto Rs.1,50,000/- - 0% 1,50,001 to Rs.3,00,000 - 10%	Rs.2,64,552/- [Rs.2,77,272 - 12,727/- i.e. 10% of Rs.1,27,272/-]
4	Deduction 1/4 th	[Rs.2,64,552 – 66,138] = Rs.1,98,414/-
5	Future prospects @ 50%	[Rs.1,98,414 + 99,207] = Rs.2,97,621/-
6	Multiplier of 15	[Rs.2,97,621 x 15] = Rs.44,64,315/-
7	Loss of estate	Rs.18,000/-
8	Funeral expenses	Rs.18,000/-
9	Loss of Consortium : (i) Parental (ii) Spousal (iii) Filial	[Rs.48000 x 2] Rs.96,000/- Rs.48,000/- Rs.48,000/- (Total Rs.1,92,000/-)
	Total Compensation	Rs. 46,92,315/-

16. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount. The enhanced amount of compensation shall be apportioned amongst the claimants as directed by the Tribunal.

17. In view of the above discussion, the appeal being FAO-3324-2012 filed by the Insurance Company is dismissed and the appeal being FAO-4025-2012 filed by the claimants is allowed. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

01.02.2024
jk

(ALKA SARIN)
JUDGE

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