IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

653 **FAO No.3343 of 2012**
Date of Decision : 01.02.2024

Bajaj Allianz General Insurance Co. Ltd. ....Appellant

VERSUS

Inderjit Kaur and Others ....Respondents

653-3 **FAO No.2871 of 2012**

Inderjit Kaur and Others ....Appellants

VERSUS

Balwinder Singh and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajneesh Malhotra, Advocate
for the appellant in FAO-3343-2012 and
for respondent No.3 in FAO-2871-2012.

Mr. Jai Bhagwan, Advocate (Amicus Curiae)
for the appellants in FAO-2871-2012 and
for respondent Nos.1 to 4 in FAO-3343-2012.

Mr. R.C. Gupta, Advocate
for respondent No.7 in FAO-3343-2012 and
for respondent No.4 in FAO-2871-2012.

ALKA SARIN, J. (Oral)

1. This common order will dispose off both the above captioned appeals being FAO-3343-2012 filed by the Insurance Company and FAO-2871-2012 filed by the claimants against 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-3343-2012

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-3343-2012) filed by the Insurance Company, being devoid of any merits, is dismissed.

FAO-2871-2012

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.6000/-
2	Annual income	[Rs.6000 x 12] = Rs.72,000/-
3	Amount after applying deduction 1/3rd	[Rs.72,000 – 24,000] = Rs.48,000/-
4	Multiplier of 14	[Rs.48,000 x 14] = Rs.6,72,000/-
5	Loss of estate	Rs.5,000/-
6	Funeral expenses	Rs.5,000/-
7	Loss of consortium	Rs.5,000/-
	Total Compensation	**Rs.6,87,000/-**
	Interest	**7.5% per annum**

11. The counsel representing the claimants has joined the Delhi Higher Judiciary. Mr. Jai Bhagwan, Advocate, who is representing the claimants in connected appeal being FAO-4025-2012, is appointed as amicus curiae to assist this Court on behalf of the claimants in the present case.

12. Learned amicus curiae appearing on behalf of the claimants, after going through the file, would contend that the age of the deceased in the present case was 44 years and that the monthly income of the deceased

has been wrongly assessed as Rs.6,000/- per month. The Tribunal has wrongly applied the deduction of 1/3rd which ought to have been 1/4th keeping in view the fact that there are 04 claimants. It has further been contended that no addition has been made towards loss of future prospects. As per the law laid down in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, an addition of 25% ought to have been made. The multiplier of 14 has rightly been applied by the Tribunal. 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 has relied upon the judgments of the Hon'ble Supreme Court in the cases **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].**

13. *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.

14. I have heard learned counsel for the parties.

15. Before the Tribunal though it was the case of the claimants that the deceased had retired as Lance Naik from the Army and was drawing a pension, however, no documents were produced on the record qua his pension. It is further the case that the deceased was a transporter, however, the claimants failed to produce any evidence qua the same. In view thereof, the income of the deceased was assessed as that of a daily wager as Rs.6,000/- per month. In the absence of any evidence the same is

maintained. There are 04 claimants in the present case and a deduction of 1/4th ought to have been applied, however, the Tribunal has wrongly applied a deduction of 1/3rd. An addition of 25% would have to be made towards loss of future prospects. The multiplier of 14 has correctly been applied. Under the conventional heads, the claimant 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 claimant-appellants would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium.

16. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.6,000/-
2	Annual income	[Rs.6,000 x 12] = Rs.72,000/-
3	Deduction 1/4th	[Rs.72,000 – 18,000] = Rs.54,000/-
4	Future prospects @ 25%	[Rs.54,000 + 13,500] = Rs.67,500/-
5	Multiplier of 14	[Rs.67,500 x 14] = Rs.9,45,000/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	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/-)
9	**Total Compensation**	**Rs. 11,73,000/-**

17. 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.

18. In view of the above discussion, the appeal being FAO-3343-2012 filed by the Insurance Company is dismissed and the appeal being FAO-2871-2012 filed by the claimants is allowed. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
01.02.2024 **JUDGE**
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NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO