2024:PHHC:032659

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

106 **FAO-1108-2016 (O&M)**
Date of Decision: 06.03.2024

MITHLESH AND OTHERS .... Appellants

VERSUS

PREM AND OTHERS .... Respondents

106-A **FAO-2669-2015 (O&M)**
Date of Decision: 06.03.2024

BHARTI AXA GENERAL INSURANCE COMPANY .... Appellant

VERSUS

MITHLESH AND OTHERS .... Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Bhardwaj, Advocate
for the appellants in FAO-1108-2016 and
for respondents No.1 to 3 in FAO-2669-2015

Mr. Rajbir Singh, Advocate
for respondent No.3 in FAO-1108-2016 and
for the appellant in FAO-2669-2015.

ALKA SARIN, J. (ORAL)

1. This order of mine shall dispose off the two above noted appeals being FAO-1108-2016 preferred by the claimant-appellants for enhancement and FAO-2669-2015 preferred by the Insurance Company challenging the quantum of compensation awarded vide award dated 03.12.2014 passed by the Motor Accident Claims Tribunal, Hisar (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.

3. The Tribunal had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.4,000/-
2	Annual Income	[Rs.4000 x 12] = Rs.48,000/-
3	Future prospects 15%	[Rs.48000 + Rs.7200] =Rs.55,200/-
4	Deductions 1/4th	[Rs.55200 - Rs.13800] = Rs.41,400/-
5	Multiplier of 13	[Rs.41400 x 13] = Rs.5,38,200/-
6	Funeral expenses	Rs.25,000/-
7	Loss of love and affection	Rs.4,00,000/-
8	**Total Compensation**	**Rs.9,63,200/-**
9	**Interest**	**7.5% per annum**

4. Learned counsel for the claimant-appellants would contend that the deceased in the present case was a housewife and that her income has erroneously been assessed as Rs.4,000/- per month. Learned counsel for the claimant-appellants would further contend that the income of the deceased ought to have been assessed as Rs.5,341/- which were the minimum wages at the relevant time. Though the multiplier has rightly been applied, however, no amount has been awarded towards loss of estate in accordance with the law laid down by 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].

5. *Per contra,* learned counsel for respondent No.3-Insurance Company has contended that the amount awarded towards loss of love and affection i.e. Rs.4,00,000/- is on the higher side. Learned counsel for respondent No.3-Insurance Company would further contend that as per the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited** (supra)an amount of Rs.40,000/- should have been given under the head "loss of consortium" and an amount of Rs.30,000/- under the conventional heads.

6. I have heard learned counsel for the parties.

7. In the present case the Tribunal has assessed the income of the deceased, who was a housewife, as Rs.4,000/- per month. However, there is no basis for assessing the same @ Rs.4,000/- per month. The minimum wage of an unskilled labourer at the relevant time was Rs.5,341/- per month. A housewife does much more. Infact, she performs multiple functions in the house i.e. cooking for the family, cleaning the house, washing clothes and utensils, the list is endless. A housewife is also a caretaker of her children as well as all the members of the house are taken care of by a housewife. The notional income i.e. Rs.4,000/- as assessed is, therefore, wholly erroneous. Taking the minimum wages of an unskilled labourer at the relevant time as Rs.5,341/-, the income of the deceased is assessed as Rs.5,341/- per month.

8. A Division Bench of this Court in the case of **Paramjit Singh &Anr. Vs. Dilbagh Singh @ Bagga& Ors. [2014 (4) RCR (Civil) 895]** has held as under :

> *"14. We may hasten to add that in all those cases, referred to above, in which 1/3rd cut has been applied, no reasoning has been given by the learned Single Judge rather in the cases, referred to above, in which 1/3rd cut has not been applied, the learned Single Judge had observed that Rs.3,000/- per month is assessed as monthly value of her services and not her monthly income and, therefore, the concept of deduction cannot be applied. In view of the aforesaid discussion, we are of the considered view that while calculating the notional income of the housewife, the entire income should be taken as dependency of the legal heirs without applying any cut much-less 1/3rd, as has been done in certain cases.*
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> *15. Since we had taken up the main case as well for decision, the compensation is, thus, ordered to be assessed @ Rs.3,000/- per month. While quantifying the same, it has to be multiplied by 12 which comes to Rs.36,000/- per annum and on applying multiplier of 14, it comes to Rs.5,04,000/-. The said amount is ordered to be paid along with Rs.5,000/- under the head of loss of*

estate and Rs.5,000/- as funeral expenses. The total compensation, thus, comes to Rs.5,14,000/- instead of Rs.3,46,000/-. Meaning thereby, the appellants would get an extra amount of Rs.1,68,000/- along with interest @ 6% per annum from the date of filing of the claim petition till its actual realization. However, rest of the terms would remain the same as settled by the learned Tribunal vide its order dated 04.01.2012."

9. Keeping in view the law laid down by the Division Bench in the case of**Paramjit Singh** (supra), no deduction ought to have been applied. The multiplier has rightly been applied keeping in view the age of the deceased, however, amounts awarded under the conventional heads i.e. loss of estate, funeral and under the head loss of consortium are not as per the law laid down by the law laid down by the Hon'ble Supreme Court. The claimant-appellants would be entitled to Rs.15,000/- + 20% towards loss of estate and Rs.15,000/- + 20% towards funeral expenses. The compensation under the head loss of consortium would be Rs.40,000/- + 20% each to all the claimant-appellants.

10. Accordingly, the reworked compensation to which the claimant-appellants are entitled is as under:

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.5,341/-
2	Annual Income	[Rs.5,341/- x 12] = Rs.64,092/-
3	Multiplier of 13	[Rs.64,092/- x 13] = Rs.8,33,196/-
4	Funeral expenses	[Rs.15,000/- + 20%] = Rs.18,000/-
5	Loss of Estate	[Rs.15,000/- + 20%] = Rs.18,000/-
6	Loss of Consortium : (i) Parental	 [Rs.48,000 x 3] = Rs.1,44,000/-
7	**Total Compensation**	**Rs.10,13,196/-**

11. 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 amount shall be apportioned as directed by the Tribunal.

12. In view of the above, the impugned award is modified to the extent stated above and the appeal filed by the claimant-appellants being FAO-1108-2016 and the appeal filed by the Insurance Company being FAO-2669-2015 are disposed off accordingly. The. Pending applications, if any, also stand disposed off.

06.03.2024 **(ALKA SARIN)**
Aman Jain **JUDGE**

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