IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-2595-2017 (O&M)

The New India Assurance Company Ltd.
...Appellant

VERSUS

Avtar Singh and others
...Respondents

(ii) Cross Objection-140-2019 (O&M)

The New India Assurance Company Ltd.
...Appellant

VERSUS

Avtar Singh and others
...Respondents

Date of Decision: April 22, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Pradeep Kumar, Advocate
for the appellant.

Mr.Surender Kumar, Advocate for
Mr.N.S.Dadwal, Advocate
for respondent No.1(a).

Ms.Palak Jain, Advocate for
Mr.Gopal Sharma, Advocate
for respondents No.2 to 5/cross objectors.

****

ARCHANA PURI, J.

FAO-2595-2017 has been filed by the insurance company, thereby, questioning the extent of compensation awarded to the claimants by learned Motor Accident Claims Tribunal, on account of death of Jaswinder Singh, in a motor vehicular accident, which took place on 23.12.2011.

XOBC-140-2019 have been filed by the claimants for seeking enhancement of the compensation.

For the convenience of discussion, the parties are referred to as making appearance before learned Tribunal.

Learned counsel for the parties heard.

So far as, the fact and manner of taking place of the accident and liability fastened upon the respondents is concerned, none of the respondents has assailed the same, including the insurance company. Rather, the insurance company, has confined its prayer only qua quantum of compensation. Therefore, aforesaid aspects, calls for no further judicial scrutiny.

Be it noted that the accident had taken place on 23.12.2011, on account of rash and negligent driving by respondent No.1-Karamjit Singh, driver of PEPSU bus bearing registration No.PB-11AT-9995. In the claim petition, deceased Jaswinder Singh was asserted to be 42 years old and at the time of accident, he was working as a Transporter-cum-Driver and was earning Rs.20,000/- per month.

While considering earnings of the deceased to be Rs.20,000/- per month, learned Tribunal had worked upon the annual earnings to be Rs.2,40,000/-. Considering the number of dependents, 1/4th was deducted from his income, on account of 'personal and living expenses' and contribution towards the family was thus taken to be Rs.1,80,000/-. On the said amount, an addition of 30% was made, on the count of 'future prospects', which comes to be Rs.54,000/- and thus, total income was worked upon as Rs.2,34,000/-. Considering the age of the deceased, multiplier of '14' was applied and the compensation was worked upon as Rs.32,76,000/-. Besides the same, Rs.25,000/- each was granted on the counts of 'funeral expenses' and 'loss of estate' and another sum of Rs.50,000/- was given towards 'loss of consortium'. In total, the compensation was worked upon as Rs.33,51,000/- and was ordered to be payable to claimants No.2 to 6, in equal shares.

In the light of the aforesaid, it is submitted by learned counsel for the appellant-insurance company that the compensation, so worked upon by learned Tribunal, is on higher side, which calls for reduction. He submits that deceased Jaswinder Singh was driver upon the truck, which was owned by his father Avtar Singh. In the given circumstances, he could not be considered to be a transporter, but however, ought to be considered as highly skilled driver and therefore, his earnings ought to be as per the minimum wages, payable to the highly skilled driver. At the relevant time, he submits that as per the notification issued by the government, the earnings of a highly skilled labour was Rs.7909/- per month and therefore, at the maximum, it could be taken as Rs.8000/- per month and thereupon, the compensation should be worked upon. Even, it is submitted that the compensation under the conventional heads also calls for reduction. As such, a prayer has been made for acceptance of appeal by learned counsel for the insurance company and consequential reduction to be made, in the quantum of compensation, already awarded.

On the other hand, learned counsel for cross-objectors/claimants resisted the aforesaid submission. Rather, he submits that since the truck was owned by father of the deceased, therefore, in any case, the deceased could not be considered as driver only. As such, he was a transporter and taking him to be so, the earnings considered by learned Tribunal, are on lower side, which calls for enhancement.

As per prevalent law, the compensation, worked upon by learned Tribunal, as detailed aforesaid, do call for re-determination.

From the evidence adduced, it stands amply established that truck bearing No.PB-10BK-9692 was the ownership by Avtar Singh, father of deceased Jaswinder Singh. Soon before the accident, Jaswinder Singh was driving the aforesaid truck. Since, the truck was owned by father and the deceased was a highly skilled driver, therefore, if he was driving the truck, at the relevant time, it, *ipso facto*, cannot be said that he was working as driver. If the family is having a truck and son of the family, drives the same, his earnings cannot be considered, as that of a minimum level, as per the notification issued by the government. In fact, he has an edge over the person, who is employed as a driver.

But, at the same time, though monthly earnings have been taken as Rs.20,000/-, but no substantive evidence, is coming on record, with regard to this extent of earnings of the deceased. In the given circumstances, keeping in view the truck owned by the family of the deceased and the deceased himself driving the said truck and also keeping in view the minimum wages for highly skilled driver, at the relevant time, in the minimum, while doing some moderation, in modest estimate, the earnings of the deceased, can appropriately be taken as Rs.12,000/- per month.

While taking the earnings as Rs.12,000/- per month, there has to be addition on the count of 'future prospects'. Even though, learned Tribunal had taken it as 30%, considering the age of the deceased, but however, as per ***Pranay Sethi's cas***e, the addition, has to be to the extent of Rs.25%, which comes to be Rs.3000/-. Thus, the earnings of the deceased are taken as Rs.15,000/- per month (Rs.12000+Rs.3000).

Considering the number of dependents of the deceased, as per ***Sarla Verma's case***, the deduction, on the count of 'personal expenses' has been appropriately taken as 1/4th and taking it to be so, the monthly dependency is worked upon as Rs.15000-3750(1/4th)=Rs.11,250/- and the annual whereof, comes to be Rs.1,35,000/-.

Considering the age of the deceased, as per ***Sarla Verma's case,*** appropriate and suitable multiplier, to be applied is '**14**', as applied by learned Tribunal and while applying the same, the loss of dependency, works out to be Rs.135000x14=**Rs.18,90,000/-**.

Besides the same, the compensation granted under the conventional heads also calls for interference. As per ***Pranay Sethi's case (supra)***, the compensation, ought to be paid to the claimants, on the count of 'loss of consortium', 'loss of estate' and 'funeral expenses', which was stated to be to the extent of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. However, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation, on the aforesaid counts, works out to be, **Rs.48,400/-, Rs.18,150/-** and **Rs.18,150/-**, respectively.

National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009
Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77

Besides the aforesaid, Rs.25,000/- has been granted towards of consortium. However, it is pertinent to mention that as per ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, all the dependents of the deceased/claimants, are entitled to ‘parental’, ‘spousal’ or ‘filial’ consortium, as required.

One of the claimant, namely Avtar Singh, who is father of deceased Jaswinder Singh had died, during the pendency of the claim petition and therefore, the compensation was awarded to claimants No.2 to 6 only.

Considering the same, the compensation payable to dependents/claimants, on account of death of Jaswinder Singh, is re-computated, as herein given:-

Loss of dependency	**:**	**Rs.18,90,000/-**
Loss of consortium	**:**	**Rs.2,42,000/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.21,68,300/-**

As such, the compensation awarded by learned Tribunal stands reduced from the extent of Rs.33,51,000/- to Rs.21,68,300/-. The compensation, as awarded by learned Tribunal was ordered to be payable in equal shares to all the claimants. Considering the same, the compensation, as now awarded be now granted to the claimants, including LRs of deceased Joginder Kaur, in equal shares. However, if the amount, as awarded by learned Tribunal had been paid to any of the claimants, the same shall be recovered proportionate to their reduced share. The remaining terms of the

Award shall remain the same.

In view of the aforesaid observations, the appeal filed by the insurance company i.e. FAO-2595-2022 stands allowed, whereas, XOBC-140-2019 filed by the claimants, stands dismissed.

April 22, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**