IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(115)

1. FAO-6010-2017 (O&M)

IFFCO TOKIO General Insurance Company Limited ...Appellant

Versus

Geeta Podial and others .....Respondents

2. FAO-4640-2017 (O&M)

Geeta Podial ...Appellant

Versus

Krishan Lal and others .....Respondents

Date of decision: - 18.02.2026

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Yogesh Gupta, Advocate
for the appellant in FAO-6010-2017 and
for respondent No.3 in FAO-4640-2017.

Mr. Munish Mittal, Advocate
for the appellant in FAO-4640-2017 and
for respondent No.1 in FAO-6010-2017.

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<u>VIKAS BAHL, J. (ORAL)</u>

1. Present order would dispose of two appeals. First being FAO-6010-2017 which has been filed by the Insurance Company challenging the award dated 31.03.2017, vide which compensation to the tune of Rs.18,74,600/- had been awarded to the claimant-Geeta Podial

along with interest, on account of death of her husband Jagdish Podial, which had taken place in a motor vehicular accident which had occurred on 05.10.2014. The prayer in the said appeal is for reduction of the compensation awarded. The second appeal i.e. FAO-4640-2017 has been filed by the claimant-Geeta Podial challenging the same award and the prayer in the same is for enhancement of compensation. The only question which arises for consideration in the present appeals is whether the compensation which had already been awarded deserves to be enhanced or reduced, as the other aspects are not being disputed before this Court.

ARGUMENTS ON BEHALF OF THE INSURANCE COMPANY:-

2. Learned counsel for the insurance company has submitted that in the present case, the benefit of future prospects has been granted by adding 50% to the salary of the deceased, which has been found to be Rs.8100/- per month. It is submitted that since as per the finding of the Tribunal in para 20, it was observed that deceased-Jagdish Podial was self-employed, thus, as per the law laid down by the Hon'ble Supreme Court in the case of "***National Insurance Company Limited* Vs. *Pranay Sethi and others*", reported as (2017) 16 Supreme Court Cases 680,** only 40% of the established income could have been awarded on account of future prospects. It is argued that on accounts of loss of estate, funeral expenses, loss of consortium and love and affection to wife, a total compensation of Rs.1,25,000/- has been awarded instead of awarding an

amount of Rs.15,000/- on account of loss of estate, Rs.15,000/- on account of funeral expenses and Rs.40,000/- on account of loss consortium, as had been observed in the above-said judgment of ***Pranay Sethi (supra)***. It is submitted that thus, an additional amount of Rs.55,000/- has been awarded on the said accounts. Learned counsel for the insurance company has submitted a chart to show that the compensation to which the claimant at best is entitled to is Rs.17,02,960/-. The said chart is reproduced as under: -

"FAO-6010-2017 : IFFCO-TOKIO v. Geeta

CLAIMANTS: Widow.

DATE OF ACCIDENT: 5.10.2014

NATURE OF CASE: Death

AGE OF DECEASED: 25 years

DRIVING LICENCE/ROUTE PERMIT/INSURANCE : Valid

DETAILS	***BEFORE THE TRIBUNAL***	***Compensation as per judgments of Sarla Verma & Pranay Sethi***
Income	*Monthly: Rs.8,100/-*	*Monthly: Rs.8,100/-*
Deduction	*1/3*	*1/3*
Future Prospects	*50%*	*40%*
Multiplier	*18*	*18*
Loss of Estate	*1,25,000*	*15,000*
Funeral Expenses		*15,000*
Loss of Consortium		*40,000*
Total Compensation	*Rs.18,74,600/-*	*Rs.17,02,960/-*

Sd/-
(YOGESH GUPTA)
ADVOCATE
COUNSEL FOR THE APPELLANT"

3. Learned counsel for the insurance company by referring to

the order dated 18.09.2017 passed by the Co-ordinate Bench of this Court has submitted that the entire amount under the head of future prospects is lying deposited but the same was not to be disbursed to the claimant and thus, once the present appeal is disposed of, a substantial amount would be released to the claimant. The order dated 18.09.2017 passed by the Co-ordinate Bench of this Court, which has been highlighted by learned counsel for the insurance company, is reproduced herein below: -

> "*Present: Mr. Yogesh Gupta, Advocate for the appellant.*
>
> ***
>
> ***<u>CM No.19479-C-II of 2017</u>***
>
> *For the reasons stated in the application, which is duly supported by an affidavit, delay of 22 days in filing the appeal is condoned.*
>
> *Application is allowed.*
>
> ***<u>Main Case</u>***
>
> ***Notice of motion for 28.02.2018, only on the aspect for grant of compensation under the head future prospects to respondent No.1 only.***
>
> *Insurance Company shall deposit the entire amount awarded by the Motor Accident Claims Tribunal. However, amount under the head future prospects shall not be disbursed.*
>
> *18.09.2017"*

<u>ARGUMENTS ON BEHALF OF THE CLAIMANT:-</u>

4. Learned counsel for the claimant, on the other hand, has not disputed the entries made in the chart with respect to future prospects. With respect to reduction on accounts of loss of estate, funeral expenses

and loss of consortium, from Rs.1,25,000/- to Rs.70,000/-, it has also been pointed out by the counsel for the claimant that at the time of issuance of notice of motion, the said argument was not raised. It is submitted that the income which has been assessed by the Tribunal to the extent of Rs.8100/- per month is on the lesser side and has argued that the income of the deceased should have been taken as Rs.12,000/- per month. It is submitted that it was the case of the claimant that the deceased, who was a cook, was earning Rs.12,000/- per month and the said averment was supported by the evidence of PW1, who is the claimant and PW2 Aman Kaushik. It is further submitted that in the said circumstances, the monthly income of the deceased be assessed as Rs.12,000/- per month.

REBUTTAL ARGUMENTS ON BEHALF OF THE INSURANCE COMPANY:-

5. Learned counsel for the appellant-insurance company in rebuttal to the same has submitted that a perusal of the evidence of PW2 Aman Kaushik, to whose house the deceased as per the case of the claimant used to go and cook food, would show that the said Aman Kaushik used to pay the deceased only Rs.2500/- per month and thus, the assessment of the total monthly income of Rs.8100/- is also on the higher side. It is further submitted that it has been found by the Tribunal that other than the oral evidence, there is no substantive evidence with regard to the income of the deceased-Jagdish Podial yet the Tribunal had taken a very liberal view in presuming the income of Jagdish Podial (since

deceased) to be Rs.8100/- per month. It is stated that at the relevant time i.e. 2014, the minimum wages for a skilled labour was Rs.6029/-, thus, seeing it from every which way the amount of Rs.8100/- per month was on a higher side.

6. Learned counsel for the claimant, on the other hand, has submitted that at the time of issuance of notice of motion in the appeal filed by the Insurance Company, the only argument raised was on the aspect of compensation under the head of future prospects, which has been granted and no argument with respect to reduction of monthly income from Rs.8100/- to a lesser amount was raised. It is further submitted that since the deceased was of 25 years of age and her widow was dependent on him, thus, the monthly income be taken as Rs.8100/- per month in the said facts and circumstances.

ANALYSIS AND FINDINGS:-

7. This Court has heard learned counsel for the parties and has perused the paper-books.

8. It could not be disputed before this Court that as per the judgment of the ***Pranay Sethi (supra)***, a person who does not have a permanent job and is only self-employed or on a fixed salary and is below the age of 40 years, can only be given the benefit of additional 40% of the established income. It is not disputed before this Court that the deceased did not have a permanent job. Further even PW2 Aman Kaushik, who is a witness examined by the claimant, had in his cross-examination stated

that the deceased was not a permanent employee. Even the Tribunal had observed in para 20 of the judgment that the said deceased-Jagdish Podial was self-employed. In the said circumstances, the argument raised on behalf of the insurance company to the effect that addition of only 40% on account of future prospects can be granted and not 50%, is meritorious and deserves to be accepted. The said aspect could not be disputed on behalf of the claimant before this Court.

9. With respect to reduction sought by the insurance company on accounts of loss of estate, loss of funeral expenses and loss of consortium to the extent of Rs.55,000/-, it would be relevant to note that at the time of issuance of notice of motion on 18.09.2017, the said aspect had not been pressed and notice of motion had only been issued on account of future prospects and thus, the counsel for the Insurance Company is estopped from raising the said plea. Accordingly, no reduction on the said account can be allowed in the appeal filed by the insurance company.

10. With respect to the issue of monthly income of the deceased, it would be relevant to note that the claimant has not produced any substantial evidence, much less, income tax returns, to prove the monthly income of the deceased. It is the case of the claimant, while appearing as PW1, that the deceased was coming back from the house of Aman Kaushik after cooking work when the accident had occurred. The said Aman Kaushik had been examined as PW2 and in his cross-examination,

he had stated that the deceased was not a permanent employee and used to prepare food two times a day and that he used to pay deceased Rs.2500/- per month. It is the case of the insurance company that at the time of accident i.e. in the year 2014, skilled workers were being paid Rs.6029/- per month. In the said circumstances, the assessment of the income by the Tribunal on the basis of presumption as Rs.8100/- seems to be liberal. However, in view of the fact that at the time of issuance of notice of motion in the appeal filed by the insurance company, the said aspect had not been challenged, thus, in the facts and circumstances of the case, this Court is of the view that the insurance company cannot be permitted to seek reduction on the said monthly income and moreover, since there is nothing on record to support the increase of the said monthly income, as prayed by the claimant, thus, accordingly, the monthly income is taken as Rs.8100/- per month as assessed by the Tribunal. Thus, in totality, the reduction in the compensation which has been awarded to the claimant is only on the aspect of excessive benefit of additional income to the extent of 10% on account of future prospects. The said amount comes to Rs.1,16,640/-.

11. Keeping in view the above-said facts, the appeal filed by the claimant i.e. FAO-4640-2017 is dismissed and the appeal filed by the insurance company i.e. FAO-6010-2017 is allowed to the limited extent that the compensation of Rs.18,74,600/- is reduced to Rs.17,57,960/- and thus, there is a reduction of Rs.1,16,640/-.

12. As per the order dated 18.09.2017 passed in FAO-6010-2017, the entire amount was deposited by the insurance company and the restraint was only for the release of amount under the head of future prospects. Since the main appeals have been decided, thus, the insurance company as well as the claimant would be entitled to the release of the amount which is still deposited in accordance with the present adjudication. The statutory amount of Rs.25,000/- if deposited by the appellant-Insurance Company in FAO-6010-2017 be also remitted to the Tribunal.

(VIKAS BAHL)
JUDGE

February 18, 2026
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes