IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No.1648 of 2012 (O&M)

Reliance General Insurance Co. Ltd.

......Appellant

Versus

Suman and others

......Respondents

2) FAO No.1282 of 2013 (O&M)

Suman and others

......Appellants

Versus

Manohar Lal and others

......Respondents

Date of Decision:

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Ms.Vandana Malhotra, Advocate,
for appellant.

Mr. Tapan Kumar Yadav, Advocate,
for respondents No.1 to 6.

None for respondent No.7.

Respondent No.8 already ex parte.

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SHEKHER DHAWAN, J

The above detailed two appeals i.e. FAO No.1648 of 2012 filed by the Insurance Company and FAO No.1282 of 2013 filed by claimants, against judgments dated 18.10.2011 passed by Motor Accident Claims Tribunal, Rewari (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation of ₹25,66,785/- on account of death of Yogesh.

2. Relevant facts for the purpose of decision of the appeals that motor vehicle accident took place on 20.11.2010 involving vehicle No.HR-55E-6466 Scorpio. The matter was reported to the police. 'The Tribunal' awarded compensation of ₹25,66,785/-.

3. Ms. Vandana Malhotra, Advocate, learned counsel for appellant-Insurance Company took the plea that 'The Tribunal' has not awarded 'Just Compensation' while calculating the amount. Even income tax has not been deducted as per requirement of case in **Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77**.

4. Mr. Tapan Kumar Yadav, learned counsel for respondents No.1 to 6-claimants took the plea that 'The Tribunal' has not awarded 'Just Compensation' because 'The Tribunal' has not awarded even minimum amount under the head consortium though one of the claimant is widow of deceased-Yogesh. Minimum amount has also not been awarded on account of funeral expenses, love and affection for minor children and parents. Learned counsel for the claimants also took the plea that while computing the amount of compensation 'The Tribunal' ought to have taken the last income of the deceased and not as per average basis.

5. Having considered the rival contentions raised by learned counsel for the parties, this Court is of the considered view that 'The Tribunal' has already awarded 'Just Compensation'. Keeping in view the

earnings of the deceased and factor of self-dependency however, 'The Tribunal' has not awarded minimum amount on account of consortium, funeral expenses and loss of love and affection as per law laid down by Hon'ble Supreme Court in case **Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra)**.

6. Hence following additions on account of enhanced compensation is framed out:

Loss of consortium	₹1,00,000/- (₹5,000/- already awarded by 'The Tribunal')
Enhanced Loss of consortium	₹95,000/-
Funeral Expenses	₹25,000/- (₹5,000/- already awarded by 'The Tribunal')
Enhanced Funeral expenses	₹20,000/-
Loss of love and affection for the minor children and parents	₹2,00,000/- (₹5,000/- already awarded by 'The Tribunal')
Total enhanced compensation	₹3,10,000/-

7. As regards to the plea taken by learned counsel for appellant-claimant that computation was to be made on the basis of last assessment and the same plea is not tenable because 'The Tribunal' has already awarded the amount of compensation and earnings. Keeping in view the earnings as well as date of death of Yogesh, so the income tax return filed after the death of Yogesh was rightly not considered and 'The Tribunal' applied correct criteria to take the average earnings of Yogesh and the said findings do not call for any interference.

8. As regards to the plea taken by Ms. Vandana Malhotra, learned

counsel for insurance company, income tax was to be deducted from the awarded amount of compensation @ 10% which comes to ₹2,56,679/- in the present case as per law laid down by Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77 (Supra)**.

9. Hence the reassessment in this case is made as under:

Amount of compensation awarded by 'The Tribunal'	₹25,66,785/-
Income Tax to be deducted from awarded amount of compensation	₹2,56,679/-
Compensation amount after deducting income tax	₹23,10,106/-

10. The enhanced amount of compensation shall be payable from the date of claim petition. The enhanced amount of compensation be paid within 45 days from today failing which claimant (s) shall be entitled to receive interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition till its realization. However, remaining conditions regarding apportionment and disbursal of amount shall remain unaltered.

11. Resultantly both the appeals are partly allowed.

(SHEKHER DHAWAN)
JUDGE

May 29, 2015
msd