222 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO No. 4625 of 2013 (O&M)
Decided on : 28.07.2015

United India Insurance Company Ltd., Chandigarh

...Appellant

Versus

Simarpreet Kaur and Others

...Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of Local Newspapers 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?

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Present : Mr. Dharam Paul Gupta, Advocate
for the appellant.

Mr. Amit Singla, Advocate
for respondents No. 1 to 5.

SHEKHER DHAWAN, J. (ORAL)

Appellant-Insurance Company has challenged the award dated 02.08.2013, whereby the Motor Accident Claims Tribunal, Fatehabad (hereinafter to be referred as 'the Tribunal'), awarded compensation amounting to ₹ 16,69,336/- on account of death of Harpal Singh in a motor vehicular accident.

Facts not in dispute that Harpal Singh died in a motor vehicular accident on 03.09.2012 leaving behind widow, minor son, parents and unmarried sister as claimants.

Learned counsel for the appellant took the plea that 'The Tribunal' fell in error while calculating the amount of compensation and taking into consideration enhancement on account of future earnings to the extent of hundred per cent whereas the maximum permissible amount is fifty per cent though the same is also under challenge and pending for consideration before the Hon'ble Apex Court. So, the appeal be accepted and amount of compensation be re-assessed accordingly.

Learned counsel for the respondents took the plea that 'The Tribunal' has completely ignored the fact that in this case, claimants are widow and one minor son, who are entitled for loss of consortium and loss of love and affection, respectively, as per judgment of Hon'ble Supreme Court in case ***Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77*** and **"*Rajesh and Others Versus Rajbir Singh and Others*, *(2013) 9 SCC 54*"**. Moreover, the claimants are five in this case and 'The Tribunal' has deducted one-third amount on account of self-dependency, whereas it should be one-fourth, as claimants are more than four. Even, minimum amount on account of funeral expenses i.e. Rs. 25,000/- has not been awarded. So, the amount of compensation be re-assessed and be enhanced suitably. There is no ground to decrease the amount on account of future earnings.

Having considered the rival submissions made by learned counsel for the parties and perusal of the record, this Court is of the considered view that as per law laid down in ***Rajesh and Others' case (supra)***, claimants in such like cases are entitled to enhance future earnings at the rate of fifty per cent in case of age of deceased is less than 40 years and in the present case, the age of deceased was 28 years. Apart from that, 'The Tribunal' fell in error while calculating the amount of compensation and awarding compensation for enhanced future earnings at the rate of hundred per cent in lieu of fifty percent.

As regards enhancement sought by claimants-respondents in this case, learned counsel for the appellant took the plea that there is no cross appeal or cross-objections having been filed by the claimants and as such, claimants cannot seek enhancement. Appeal filed at this instance of Insurance Company. There is no dispute on the legal point that claimants can take this plea at the time of arguments in the appeal and if the amount would be permissible to be awarded, the Court must award the same even without any cross-appeal or cross-objections.

Now coming to the amount of compensation. The claimants are entitled to seek enhancement on account of self-dependency, loss of love and affection for minor and loss of consortium for the widow and funeral expenses as per law laid down in ***Sarla Verma's case (supra) and Rajesh and Others' case (supra)***. The claimants-respondents are entitled to receive a sum of ₹ 1,00,000/- on account of loss of consortium for the widow and another sum of ₹ 1,00,000/- on account of loss of love and affection for the minor child. Apart from that, claimants-respondents entitled to receive a sum of ₹ 25,000/- on account of funeral expenses. Self-dependency was also to be taken one-fourth in this case as claimants are more than four in this case. Accordingly, the amount of compensation re-assessed as under:-

Particulars	***Amount (₹)***	***Amount (₹)***
Monthly Income	6100	
Annual Income (₹ 6100 X 12)	73200	
Less: $1/4^{th}$ of ₹ 73,200/- on account of dependency	18300	
Total	54900	
Add: 50% of ₹ 54900/- on account of future prospects	27450	
Net Income	82350	
Multiplier of 17 of ₹ 82,350/-		1399950

Particulars	***Amount (₹)***	***Amount (₹)***
Add: (i) Loss of consortium for wife		100000
(ii) Loss of love and affection for minor son		100000
(iii) Funeral Expenses		25000
Total Compensation (A)		1624950
Compensation awarded by 'The Tribunal' (B)		1669336
Compensation to be refunded by the respondents-claimants (B-A)		44386

The amount of ₹ 44,386/- is to be refunded by the respondents-claimants to the appellant-Insurance Company. The said amount will be payable from the date of claim petition alongwith interest @ 7.5% per annum from the date of filing of this claim petition till its realization.

Resultantly, the present appeal accepted partly.

July 28, 2015 **(SHEKHER DHAWAN)**
'dk kamra' **JUDGE**