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

FAO No. 3249 of 2006 (O&M)
Date of decision: 10.03.2016

Amarjit Kaur and others

...Appellants

versus

Gurpinder Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashwani Arora, Advocate, for the Appellants.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

K.Kannan, J. (ORAL)

The appeal is for enhancement of claim for compensation for death of a male aged 45 years. He was said to be running a medical store and had shown a return of taxable income of Rs. 2,45,000/- just prior to his death. He had died on 10.11.2001. The Tribunal was assessing a compensation observing that it is not possible to take the entire income earned by him as constituting the loss. Since his son was admittedly running the business of medical store after his father's death, it took therefore, the income at Rs. 4,500/- and proceeded to assess the compensation at Rs. 3,72, 000/-. The counsel states that this Court had an occasion to deal with the situation of a partner in tobaccoo business died and the wife being inducted into the partnership referred to a judgment in Himachal Road Transport Corporation Vs. Usha Wadhwa

<u>and others, FAO No. 656 of 2000, decided on 05.04.2011.</u> This Court had held that the nature of business was such that his wife could not have effectively participated and contributed to the augmenting of the business of tobaccoo and noting the nature of business and the contribution that he could have made as relevant, proceeded to assess the compensation on the basis of the income that he was earning when he was a partner and discarded the effect of induction of his wife as relevant for any deduction. This judgment delivered on 05.04.2011 had been confirmed in Civil Appeal No. 5253 of 2012 by the Hon'ble Supreme Court. The counsel would rely on this judgment to urge a point that in this case the son was a B.com graduate and was not in any way fully equipped to do the pharmaceutical business. The principle of what was applied in <u>Usha Wadhwa's case</u> (Supra) has to be applied. The observations of this Court in <u>Usha Wadhwa's case</u> (Supra) are not as expansive as they are made out to be. On the contrary, this Court has only observed that it is the nature of business, the decree of participation that deceased partner in the day to day activities and his personal contribution to profitability of how the death could have impacted the profitability would all be relevant. In this case, unlike the wife who may not have been as proficient in tobaccoo business, the son has become graduate and I have no reason to suspect that he cannot run the pharmaceutical business. If the deceased was a pharmacist, there may be an additional expenditure that the son may require to incur by hiring the service of pharmacist. Unfortunately, for me, the additional

expenses which could be factored as a component of damages is not availale. I shall make an approximation and take the average loss of income attributable to the managerial services of the deceased as a pharmacist at an average of about Rs. 12,000/- per month considering the total income of the business at Rs. 2,45,000/- and proceed to determine the compensation as under:

Fatal	Date of accident	10.11.2001	
Age	45		
Occupation	Medical Store		
Claimants	Widow, 2 sons, mother		
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Income	4,500/-	
2.	Add, % of increase, 30%/50%		12,000/-
3.	Deduction, 1/2, 1/3, 1/4,		9,000/-
4.	Multiplicand		1,08,000/-
5.	Multiplier	10	14
6.	Loss of dependence		15,12,000/-
7.	Medical Expenses		
8.	Loss of Consortium		1,00,000/-
9.	Loss of love and		1,50,000/-

	affection		
10.	Loss to estate		5,000/-
11.	Funeral Expenses		10,000/-
	Total	3,72,000/-	17,77,000/-

There shall be a total compensation of Rs. 17,77,000/-. The additional compensation as assessed will attract interest at 7.5% from the date of the petition till the date of payment. The amount shall be distributed in the ratio of 2:2:2:1. The liability shall be on the insurance company as already assessed by the Tribunal. The award is modified and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

10.03.2016
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