IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.1610 of 2009

Date of decision : 11.03.2016

Poonam Sharma and others

......Appellants

Versus

Subhash Chand and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Pulkit Dagar, Advocate for
Mr. Rajesh Lamba, Advocate for appellants.

Mr. R.C. Kapoor, Advocate for respondent No.3.

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DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 14.06.2008, passed by learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter called the 'Tribunal') vide which the compensation to the tune of Rs.7,11,958/- along with interest @ 7.5% per annum from the date of filing the claim petition till realisation, has been awarded on account of death of Vineet Sharma in the motor vehicular accident, which took place on 15.07.2006.

2. The present appeal has been preferred for enhancement of the amount of compensation.

3. Learned counsel for the appellants contended that the deceased was only 29 years of age. He was employed as Business Promotion Executive with We 'R' Info Tech Udyog Vihar, Gurgaon and was a qualified person but no future prospects have been added to the income of the deceased. He further contended that even the income of the deceased has been taken to be on the lower side. The appointment letter Ex.27 shows that the salary of the deceased was Rs.7500/- per month. He further contended that multiplier of 15 has been wrongly applied. As per the age of the deceased, the multiplier of 17 should have been applied. He further contended that less amount has been awarded towards the other conventional heads. No amount has been awarded towards loss of love and affection to the children.

4. On the other hand, Mr. R.C. Kapoor, Advocate, learned counsel for respondent No.3-Insurance Company contended that there is no plea regarding grant of future prospects in the grounds of appeal. He further contended that the deceased was not a permanent employee having regular increments. So, no future prospects were required to be added to the income of the deceased. To support his contentions, he relied upon cases ***Shashikala and others Vs. Gangalakshmamma and another 2015 ACJ 1239*** and ***National Insurance Company Ltd. Vs. Pushpa and others 2015(6) RCR (Civil) 844***. He further contended that there was no

evidence to show that the actual salary of the deceased was Rs.7500/- per month. He further contended that just compensation has been awarded by the learned Tribunal under all other conventional heads.

5. I have duly considered the aforesaid contentions.

6. As per the case of the appellants-claimants, the deceased was working as Business Promotion Executive with We 'R' Info Tech Udyog Vihar, Gurgaon and was earning Rs.7500/- per month. The claimants have merely placed on record the copy of his appointment letter Ex.P27. Neither the salary certificate of the deceased has been brought on record nor any official of his employer has been examined with the record of his salary. So, no fault can be found with the income of the deceased taken by the learned Tribunal at the rate of Rs.5000/- per month.

7. As per the postmortem report Ex.P25, deceased was 29 years of age at the time of his death. The learned Tribunal has not added any future prospects to the income of the deceased. Learned counsel for the respondent-Insurance Company has pleaded that as the deceased was not holding any permanent job carrying regular increments, so no future prospects were required to be added to the income of the deceased. But I do not find any substance in this plea. The deceased was employed as a Business Promotion Executive in the Company. It shows that he was an educated person. It is a fact of common knowledge that the income/salary of an employee, whether in government or private job, regularly increases with the passage of time. Even the persons working in the private concerns have appreciation to their income. The income of the self-

employed persons also increases with the passage of time and the experience which they gain in their profession. So, the future prospects should have been certainly added to the income of the deceased.

8. Case ***Shashikala and others Vs. Gangalakshmamma and another*** (supra), relied upon by learned counsel for the respondent-Insurance Company is based on ***National Insurance Company Ltd. Vs. Pushpa*** (supra). In ***Pushpa's*** case (supra), the Hon'ble Apex Court has referred the matter to the Larger Bench for authoritative pronouncement with respect to the addition of future prospects in view of the conflict between the legal principles in cases ***Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65*** and ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54***. So, in those cases, the matter was referred to the Larger Bench for authoritative pronouncement in view of the conflicting decisions in above referred two cases. But in a recent judgment dated 15.05.2015 rendered by the three Judges Bench of Hon'ble Apex court in case ***Munna Lal Jain Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, it has been laid down as under:-

> *"11. As far as future prospects are concerned, in* ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54****, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote:*
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> > *"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will*

> *also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."*

The deceased being of the age of 30 years, 50% is the required addition."

9. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court in the latest judgment, the claimants were held entitled to the future prospects to be added towards the income of the deceased. In view of the age of the deceased, 50% of the income of the deceased was required to be added as future prospects. The total income of the deceased comes to Rs.7500/- per month i.e. Rs.90,000/- per annum. 1/3rd of the aforesaid amount is to be deducted towards personal and living expenses of the deceased. The remainder comes to Rs.60,000/-. The learned Tribunal has wrongly applied the multiplier of 15. In view of the age of the deceased, the multiplier of 17 should have been applicable. So, the loss of dependency comes to Rs.10,20,000/-.

10. The learned Tribunal has awarded Rs.71,958/- towards medical expenses on the basis of the bills produced by the claimants.

11. The learned Tribunal has further awarded Rs.5000/- towards funeral expenses and Rs.5000/- towards loss of consortium to claimant No.1 Smt.Poonam Sharma, which are quite inadequate. The claimant shall be entitled to a sum of Rs.25,000/- towards funeral and transportation expenses. Smt. Poonam Sharma widow shall be entitled to

Rs.1,00,000/- towards loss of consortium. Claimants No.2 & 3 the minor daughters of deceased will be entitled to Rs.1,00,000/- towards loss of care, guidance, love and affection. The claimants shall also be entitled to sum of Rs.20,000/- towards loss to estate. The total amount of compensation comes to Rs.13,36,958/-.

12. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.13,36,958/- from Rs.7,11,958/- as awarded by the learned Tribunal. The claimant shall be entitled to interest on the enhanced amount from the date of filing the petition till realization @ 7.5% per annum, the rate of interest as awarded by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

11.03.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**