

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

FAO No.4038 of 2011

Date of decision : 13.12.2016

Smt. Raj Pati and others

.....Appellants

Versus

Jag Mohinder and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Dinesh Saini, Advocate for appellants.

Ms. Krishna Kant, Advocate for
Mr. Tajender K. Joshi, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 08.02.2011 passed by the learned Motor Accidents Claims Tribunal, Panipat (hereinafter called the “Tribunal”) in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”), vide which appellants-claimants have been awarded a sum of ₹3,94,000/- as compensation on account of death of Rishi Pal in the motor vehicular accident which took place on 18.05.2009.

2. The present appeal has been preferred by the appellants-claimants for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and gone through

the record of the case meticulously.

4. Initiating the arguments, learned counsel for the appellants-claimants contended that learned Tribunal has taken the income of the deceased on the lower side. Even the income of the unskilled labourer at the relevant time was ₹3840.01. However, the claimant was working as a contractor and was earning ₹12,000/-. He further contended that no future prospects has been awarded towards the income of the deceased. No amount has been awarded to the mother of the deceased towards loss of love and affection and less amount has been awarded towards funeral and last rites expenses.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that the learned Tribunal has awarded the just compensation. He was not having any permanent job, so no future prospects shall be admissible towards the income of the deceased. He further contended that just and appropriate amount of compensation have been awarded by the learned Tribunal under all other heads and the impugned award does not call for any interference.

6. I have duly considered the aforesaid contentions.

7. As per the case of the claimants, the deceased was working as a construction contractor and was earning ₹12,000/- per month, but the claimants have not produced any documentary evidence to show that deceased was working as a construction contractor. The oral evidence adduced by the claimant on this aspect carries no evidentiary value as if a person was working as construction contractor, he has to maintain the

record/accounts, but no such documentary evidence has been brought on record by the claimants. In the absence of this best evidence, mere oral statement of PW-1 Anil Kumar and PW-2 Raj Pati claimant cannot be relied upon. So, the learned Tribunal has rightly considered the deceased to be unskilled labourer. However, the income of the deceased taken by the learned Tribunal is on the lower side. As per the notification issued by the Labour Department, State of Haryana, the minimum monthly wages of the unskilled labourer with effect from 01.01.2009 were ₹3840.01. This accident has taken place on 18.05.2009. So, the income of the deceased shall be taken to be ₹3800/- per month.

8. The learned Tribunal has also not added any future prospects to the income of the deceased. As per the postmortem report Ex.P3, the age of the deceased was 32 years. He was hale and hearty. His income was bound to increase with the passage of time. So, the future prospects should have been added to the income of the deceased. In view of the age of the deceased, 50% of his income is required to be added towards future prospects. The total income of the deceased comes to ₹5700/- per month *i.e.* ₹68,400/- per annum.

9. Keeping in view the number of dependent family members, 1/3rd of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to ₹45,600/-. The deceased was 32 years of age, so the multiplier of 16 shall be applicable. The compensation on account of loss of dependency comes to ₹7,29,600/-.

10. The learned Tribunal has not awarded any amount towards

loss of love and affection to appellant-claimant No.1 Smt. Raj Pati, the mother of the deceased and less amount has been awarded towards funeral expenses. The appellant-claimant1 shall be entitled to ₹1,00,000/- towards loss of love and affection of her son and ₹25,000/- towards funeral and last rites expenses. Total amount of compensation payable to the appellants-claimants comes to ₹8,54,600/-.

11. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The total amount of compensation payable to appellants-claimants is enhanced to ₹8,54,600/- from ₹3,94,000/- as awarded by the Tribunal. The appellants-claimants shall be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount of compensation and apportionment amongst the claimants shall remain same as determined by the learned Tribunal in the main award.

12. As the matter with respect to future prospects has been referred to the Larger Bench of the Hon'ble Apex Court in case ***National Insurance Company Vs. Pushpa, 2015 (9) SCC 166***, in order to safeguard the interest of respondent-Insurance Company, the amount of compensation under the head future prospects shall be disbursed to the claimants against adequate security in the form of sufficient indemnity bonds to the satisfaction of the learned Tribunal/executing Court, wherein the claimants will undertake that if the Hon'ble Apex Court adjudicates that the casual labourers/persons not holding the permanent jobs will not be entitled to the

future prospects, then they will be bound to refund the amount of future prospects received by them on moving the requisite application by the respondent-Insurance Company and the learned Tribunal will be competent to take the steps without making any reference to this Court.

13.12.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No