

(1) FAO No. 4837 of 2011 (O&M)
Date of decision: **24.8.2016**

...Respondents

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This order will dispose of FAO Nos. 4837 and 5219 of 2011, as these have emerged out of the same award dated 14.2.2011 passed by the Motor Accident Claims Tribunal, Yamuna Nagar (in short '**the Tribunal**'), whereby compensation was awarded in favour of Babita Rani and others in regard to death of Devender and to Tarsem Singh (appellant in FAO No. 5219 of 2011) for sustaining injuries in a motor vehicular accident that occurred on 25.4.2008.

FAO No. 4837 of 2011

Counsel for the appellants has submitted that the learned Tribunal has assessed income of the deceased @ ₹4,000/- per month, deducted 1/4th for personal expenses, adopted a multiplier of 16 to compute loss of dependency to the tune of ₹5,76,000/- Another amount of ₹10,000/- each has been awarded for loss of consortium to the widow and funeral expenses and ₹4,000/- towards loss of estate, making total compensation to the tune of ₹6,00,000/-. He has further submitted that the appellants have not been allowed benefit of increase in income for future prospects. The deceased was in the age bracket of 31-35 years and in view of judgment of Hon'ble the Supreme Court Rajesh and others Versus Rajbir and others 2013 (9) SCC 54, the appellants are entitled to future prospects to the extent of 50%.

Counsel for the insurance company has supported the award with the submission that the matter with regard to future prospects is pending consideration before a larger Bench of Hon'ble the Supreme Court of India in National Insurance Company Limited Vs. Pushpa and others vide SLP No. 8058/2014.

I have heard counsel for the parties, perused the paper book and the original records.

The appellants shall be entitled to increase in income for future prospects to the extent of 50%. Pendency of the matter before a Larger Bench is not sufficient to deny the benefit till the judgment in **Rajesh and others case (supra)** is varied or set aside by Hon'ble the Apex Court. The loss of dependency, after allowing benefit of increase in income for future

prospects, comes to ₹8,64,000/- (₹3,000/- x 12 x 16=5,76,000/- + ₹2,88,000/- (50% for future prospects).

The widow of the deceased is awarded a sum of ₹ 1 lakh for loss of consortium. The minor children, namely, Shristhi @ Payal and Sagar are awarded a sum of ₹1.5 lakh in equal share and Machhala Rani, mother of the deceased, is awarded a sum of ₹50,000/- for loss of love and affection. The appellants shall also be entitled to ₹25,000/- each for funeral expenses and loss of estate. In this manner, total compensation comes to ₹12,14,000/-. The enhanced compensation is calculated at ₹6,14,000/- (₹12,14,000-6,00,000/-) payable with interest @ 7.5% from the date of filing of the petition till realization. The enhanced compensation shall be payable to the widow and minor children of the deceased in equal share except the amount of ₹50,000/- payable to Machhala Rani for loss of love and affection. The compensation awarded to minor children shall be deposited in the shape of FDR in a nationalized bank for a period of three years or till they attain the age of majority, whichever is earlier. The interest on the fixed deposit receipts shall be payable to the mother for meeting expenses of minors. The compensation payable to the widow shall also be deposited in a fixed deposit receipt for a period of three years.

The appeal is partly allowed in the aforesaid terms.

FAO No. 5219 of 2011

Tarsem Singh has been awarded an amount of ₹10,000/- for medical treatment and another consolidated sum of ₹10,000/- for pain and suffering, loss of amenities, special diet, transportation, service of an attendant etc.

The appellant examined Dr. Vandana (PW3) and Dr. K. B. Gupta (PW6) to prove that he suffered fracture of patella left side, surgery was performed on 27.4.2008 and was discharged from the hospital in the first week of May, 2008. There is no evidence on record with regard to avocation of the injured, much less his income. However, in the light of facts that the victim suffered fracture of patella left side and was operated in the hospital, he must not have been in a position to attend to his work, at least for a period of two months. He is awarded an amount of ₹7,000/- for loss of income.

The Tribunal has awarded an amount of ₹10,000/- for medical treatment and the same does not require any intervention. However, the consolidated amount of ₹10,000/- awarded under various heads is enhanced to ₹30,000/-. In this manner, total compensation payable to the appellant comes to ₹47,000/- and the enhanced compensation-₹ 27,000/- is payable with interest @ 7.5% from the date of filing of the petition till realization.

The appeal is accordingly disposed of.

24.8.2016
prem

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No