

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

FAO No.1214 of 2012 (O&M)

Date of decision : 29.08.2016

Smt. Saroj and others

.....Appellants

Versus

Jai Pal and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. B.K. Chaudhary, Advocate for
Mr. Pankaj Bali, Advocate for appellants.

Mr. R.N. Lohan, Advocate for respondents No.1 & 2.

Mr. K.L. Saini, Advocate for respondent No.3-
Insurance Company.

DARSHAN SINGH, J.

CM-4946-CII-2012

There is delay of 36 days in filing the present appeal. The appellants have filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 36 days in filing the appeal is hereby condoned.

FAO-1214-2012

The present appeal has been preferred against the award dated 04.08.2011, passed by the learned Motor Accidents Claims Tribunal, Jind (hereinafter called the "Tribunal"), whereby the appellants-claimants have

have been awarded compensation to the tune of ₹4,42,000/- on account of death of Jai Bhagwan alias Jain alias Jain Singh in the motor vehicular accident which took place on 17.10.2008.

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

3. I have heard learned counsel for the parties and have gone through the paper-book carefully.

4. Initiating the arguments, learned counsel for the appellants contended that the learned Tribunal has not awarded any future prospects to the income of the deceased. No amount has been awarded towards loss of love and affection to the children. Less amount has been awarded for loss of consortium to the widow and funeral expenses. Thus, he contended that the Tribunal has not awarded the just compensation.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that the deceased was a casual labourer. 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 running a tent house. He was also doing the agricultural work and dairy farming and was earning ₹20,000/- per month. But the claimants have not placed on file

any documentary evidence to prove that the deceased was running any tent house or he was owner in possession of any agricultural land. There was also no evidence to show that he was carrying on dairy farming. Thus, on appreciation of the evidence on record, the learned Tribunal came to the conclusion that the deceased cannot be taken more than a casual workman and determined his income to be ₹3600/- per month. There could be no dispute with the aforesaid findings of the learned Tribunal.

8. The learned Tribunal has not added any future prospects to the income of the deceased. Even though the deceased was just a casual worker but still his income was certainly bound to increase with the passage of time as it is fact of common knowledge that income of nobody remain stagnant for whole of his life and it increases with the passage of time that is why even the government revises the minimum wages of the unskilled/skilled workers periodically. So, the future prospects should have been added to the income of the deceased.

9. The learned Tribunal has determined the age of the deceased to be 38/39 years. So, 50% of the income of the deceased shall be added towards future prospects. Thus, the monthly income of the deceased comes to ₹5400/- (3600 + 1800) *i.e.* ₹64800/- per annum. 1/3rd of the income of the deceased is to be deducted towards his personal and living expenses. The remainder comes to ₹43,200/-. In view of the age of the deceased the multiplier of 15 shall be applicable. The loss of dependency comes to ₹6,48,000/-.

10. In addition to the aforesaid amount the appellant-claimant

No.1 Smt. Saroj the widow of deceased shall be entitled to ₹1,00,000/- towards loss of consortium. The appellants-claimants Jaideep and Sheetal the minor children of the deceased shall also be entitled to ₹1,00,000/- towards loss of love, care and guidance. The claimants shall also be entitled to ₹25,000/- towards funeral and last rites expenses. Thus, the total amount of compensation payable to the claimants comes to ₹8,73,000/-.

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 ₹8,73,000/- from ₹4,42,000/- awarded by the Tribunal. The appellants-claimants shall also 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 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 No.3-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.

29.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No