IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.1517 of 2012 (O&M)
Date of decision : 20.05.2016

Kasturi Devi and others

......Appellants

Versus

Pani Devi 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. Namit Khurana, Advocate for the appellants.

Mr. Amardeep Sheoran, Advocate for respondents No.1 & 3.

Respondent No.2 proceeded against *ex parte*.

Mr. Aseem Aggarwal, Advocate for respondent No.5.

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DARSHAN SINGH, J.

CM-6214-CII-2012

There is delay of 94 days in re-filing the present appeal. The appellants have filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 94 days in re-filing the present appeal is hereby condoned.

<u>Main Appeal</u>

The present appeal has been preferred against the award dated 23.07.2011, passed by the learned Motor Accidents Claims Tribunal, Yamunanagar at Jagadhari (hereinafter called the 'Tribunal'), vide which the appellants-claimants have been awarded compensation to the tune of Rs.5,56,800/- on account of death of Riki Ram in the motor vehicular accident which took place on 05.11.2008.

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

3. Learned counsel for the appellants contended that no future prospects have been awarded towards the income of the deceased. He was 45 years of age. 30% of his income should have been added towards the future prospects. He further contended that no amount has been awarded on account of loss of love and affection to the children and mother of the deceased. The compensation under the other non-conventional heads is highly inadequate. Thus, he pleaded for enhancement of the amount of compensation.

4. On the other hand, Mr. Asim Aggarwal, Advocate, learned counsel for respondent respondent No.5 contended that the just compensation has been awarded by the learned Tribunal by taking into the account the income and age of the deceased. He contended that no future prospects were required to be added to the income of the deceased as the deceased was not having any permanent job earning regular increments. Thus, he contended that there is no scope for enhancement of the amount of compensation.

5. I have duly considered the aforesaid contentions.

6. As per the case of the claimants, deceased was 41 years of age and was earning Rs.8000/- per month from his occupation as a driver with Gurcharan Kaur, widow of late Sukhwinder Singh and also by running the milk dairy. On appreciation of evidence on record, learned Tribunal has determined the income of the deceased to be Rs.4300/- per month, almost equal to the minimum wages fixed by the Haryana Government for semi-skilled daily wagers prevalent at the relevant time. So, no fault can be found with the income of the deceased taken by the learned Tribunal at the rate of Rs.4300/- per month. But the learned Tribunal has not awarded any future prospects towards the income of the deceased. It is alleged that deceased was working as a driver. The learned Tribunal has also considered the deceased to be semi-skilled. So, there was every possibility of the increase in the income of the deceased with the passage of time. The contentions raised by learned counsel for the respondent-Insurance Company that the matter regarding future prospects has been referred to the Larger Bench of Hon'ble Apex Court in case ***National Insurance Company Ltd. Vs. Pushpa and others 2015 (9) SCC 166*** and no future prospects should be granted, has no substance. In ***National Insurance Company Ltd. Vs. Pushpa and others*** (supra), due to divergent opinion in cases ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54*** and ***Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65***, the matter was referred to the Larger Bench. ***Pushpa's case*** was decided by the Hon'ble Apex Court on 02.07.2014 but in a latter judgment rendered by three-Judges Bench of the Hon'ble Apex Court in case ***Munna Lal Jain and another Vs.***

Vipin Kumar Sharma and others 2015(3) PLR 304, the future prospects were allowed in case of the self-employed person following the observations in ***Rajesh and others Vs. Rajbir Singh and others*** (supra), wherein it was 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."
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> The deceased being of the age of 30 years, 50% is the required addition."

7. Thus, in view of the latest judgment of the Hon'ble Apex Court in ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others*** case (supra), keeping in view the age of the deceased, 30% of the income of the deceased are required to be added to his income. So, the monthly income of the deceased comes to Rs.5590/- (4300+1290) and the annual income of the deceased comes to Rs.67,080/-. The deceased had six dependants, so 1/4th of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to Rs.50,310/-

(67,080 - 16,770). Now we are to select the suitable multiplier. In view of the age of the deceased, the multiplier of 14 shall be applicable. Thus, the compensation on account of loss of dependency comes to Rs.7,04,340/- (50,310 x 14).

8. The learned Tribunal has awarded Rs.10,000/- towards last rites and transportation and Rs.5000/- as loss of consortium, which is highly inadequate. The appellant-claimant No.1 Smt. Katuri Devi, the widow of deceased shall be entitled to a sum of Rs.1,00,000/- towards loss of consortium. The sons of the deceased shall also be entitled to Rs.1,00,000/- towards loss of love, care and guidance. Claimant No.6 Smt. Sunheri Devi, the mother of the deceased, shall also be entitled to a sum of Rs.1,00,000/- on account of loss of love and affection of her son. In addition to that, the claimants shall also be entitled to funeral expenses amounting to Rs.25,000/-. Thus, the total amount of compensation payable to the appellants-claimants comes to Rs.10,29,340/-.

9. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.10,29,340/- from Rs.5,56,800/- as awarded by the learned Tribunal. The appellants-claimants shall also be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the date of filing the petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

20.05.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**