IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.4652 of 2012

Date of decision : 17.10.2016

Smt. Pushpa Devi and others

......Appellants

Versus

Bhawar Lal and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Jarnail Singh Saneta, Advocate for appellants.
Mr. Lalit Garg, 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 28.03.2012, passed by learned Motor Accidents Claims Tribunal, Rohtak (hereinafter called the "Tribunal"), vide which they has been awarded compensation to the tune of ₹4,96,000/- on account of the death of Pardeep Kumar in the motor vehicular accident which took place on 04.02.2009.

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

3. Vide order dated 02.02.2015, respondents No.1 and 2 were ordered to be served by way of substituted service of publication in the newspaper. Notices through publication against respondents No.1 and 2 were duly published in the newspaper, but in spite of that they did not appear.

4. I have heard learned counsel for the parties and gone through the paper-book meticulously.

5. Learned counsel for the appellants contended that the learned Tribunal has not added any future prospects to the income of the deceased. No amounts towards love and affection have been awarded to the minor children and parents of the deceased. Very less amount has been awarded towards loss of consortium and on account of transportation and funeral expenses. Thus, he contended that the compensation awarded by the learned Tribunal is highly inadequate.

6. On the other hand, Lalit Garg, Advocate, learned counsel for respondent-Insurance Company contended that the deceased was not having any permanent job, so future prospects were not admissible towards his income. He further contended that the compensation awarded by the learned Tribunal is just and appropriate keeping in view the antecedents, age and income of the deceased.

7. I have duly considered the aforesaid contentions.

8. As per the case of the appellants-claimants, deceased Pardeep Kumar was working as supplier of bricks and was earning ₹15,000/- per month. But on appreciating the evidence brought on record, the learned Tribunal has rightly concluded that the claimants could not establish that deceased was working as a brick supplier. So, the monthly income of the deceased was rightly taken to be ₹3600/- per month. However, the learned Tribunal has not awarded any future prospects to the income of the deceased. The deceased was only 37 years and 03 months of age at the time of his accidental death. It was also not disputed that he was

hale and hearty at the time of his death. So, with the passage of time, his income was bound to increase. So, there was no reason not to add the future prospects to the income of the deceased. As already mentioned, the deceased was 37 years and 03 months of age on the date of his accidental death, so he was below 40 years of age and 50% of his income is required to be added towards the future prospects. In this way, the total income of the deceased comes to ₹5400/- per month *i.e.* ₹64,800/- per annum. The learned Tribunal has rightly deducted 1/4th of the income of the deceased towards his personal and living expenses keeping in view the number of dependents. The remainder comes to ₹48,600/-. The learned Tribunal has also rightly applied the multiplier of 15 so the loss of dependency comes to ₹7,29,000/-.

9. The learned Tribunal has only awarded a sum of ₹10,000/- towards last rites and transportation expenses, which is required to be enhanced to be ₹25,000/-. Appellant-claimant No.1 Smt. Pushpa Devi the widow of the deceased has been awarded only a sum of ₹5000/- towards loss of consortium, which is enhanced to ₹1,00,000/-.

10. Appellants-claimants No.2 & 3 are the son and daughter of the deceased. No amount has been awarded to them for loss of love, care and guidance of their father. So, they shall be entitled to ₹1,00,000/- under this head. Similarly, appellants No.4 and 5 the parents of the deceased shall also be entitled to a sum of ₹1,00,000/- on account of loss of love and affection of their son. The total amount of compensation payable to the claimants comes to ₹10,54,000/-.

11. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to

appellants-claimants is enhanced to ₹10,54,000/- from ₹4,96,000/- as awarded by the 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.

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.

17.10.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No