IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(1) **FAO No.1390 of 2013 (O&M)**
Date of decision : 18.02.2016

Smt. Toshi Devi and another

......Appellants

Versus

Surinder Singh @ Chhindi and others

...Respondents

(2) **FAO No.1391 of 2013 (O&M)**
Date of decision : 18.02.2016

Kiran Sharma and others

......Appellants

Versus

Surinder Singh @ Chhindi

...Respondents

(3) **FAO No.1392 of 2013 (O&M)**
Date of decision : 18.02.2016

Smt. Santosh Devi and others

......Appellants

Versus

Surinder Singh @ Chhindi

...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. Rajiv Sidhu, Advocate for appellants in all the appeals.

Mr. Akash Sridhar, Advocate for
Mr. Ashwani Talwar, Advocate for respondent No.3
in all the appeals.

Mr. V. Ramswaroop, Advocate for respondent No.5
in all the appeals.

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DARSHAN SINGH, J.

CM-7997-CII-2013 in
FAO-1390 of 2013

There is delay of 77 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.

MAIN CASES

This judgment of mine shall dispose of all the three appeals mentioned above, which have arisen out of the same award dated 25.05.2012 passed by learned Motor Accidents Claims Tribunal, Karnal (hereinafter called the 'Tribunal'), vide which appellants of FAO No.1390 have been awarded the compensation to the tune of Rs.2,50,000/- on account of death of their son Ajay Kumar; the claimants of FAO No.1391 have been awarded the compensation of Rs.5,50,000/- on account of death of Subhash son of Telu Ram and appellants of FAO No.1392 have been awarded the compensation to the tune of Rs.5,50,000/- on account of death of Subhash son of Nathu Ram in the motor vehicular accident which took place on 24.10.2009.

2. All the three appeals mentioned above have been preferred for enhancement of the amount of compensation.

3. Learned counsel for the appellants-claimants contended that the compensation awarded by the learned Tribunal is inadequate. He has awarded compensation to the tune of Rs.2,50,000/- only on account of death of male child of claimants of FAO No.1390. Learned Tribunal has not awarded any future prospects towards the income of the deceased in FAO No.1391 and 1392. The compensation awarded under the other conventional heads is also inadequate and in some of the conventional heads no compensation at all has been awarded.

4. On the other hand, learned counsel for the respondents contended that the learned Tribunal has awarded just and appropriate compensation to all the appellants. The learned Tribunal has computed the compensation by taking into consideration all the heads. Deceased Subhash son of Telu and Subhash Chand son of Nathu were not holding any permanent job, so no amount towards future prospects was required to be added. Thus, he contended that no interference is required in the impugned award.

5. I have duly considered the aforesaid contentions.

6. Firstly, I take up FAO No.1390. In this case claimants/appellants Smt.Toshi Devi and another have sought the compensation on account of death of their son Ajay Kumar in this accident. He was about 12 years of age at the time of the accident as per the postmortem report Ex.P6. So, there is no denial to the fact that he

being child was not having any earnings. The learned Tribunal has awarded a total sum of Rs.2,50,000/- as compensation to the claimants but in my opinion, the compensation computed by the learned Tribunal is inadequate. The learned Tribunal has taken the notional income of the deceased on the lower side. In case ***Kishan Gopal and another Vs. Lala and others 2013(4) RCR (Civil) 276***, a child aged 10 years has died. The Hon'ble Apex Court has taken the notional income of the child at the rate of Rs.30,000/- per annum and the multiplier of 15 was applied. Rs.50,000/- was awarded under conventional heads *i.e.* loss of love and affection, funeral expenses and last rights etc. This authority is fully applicable to the case in hand. So, the notional income of deceased Ajay Kumar to be taken Rs.30,000/- per annum. After applying the multiplier of 15, the multiplicand comes to Rs.4,50,000/-. The appellanst-claimants shall be further entitled to Rs.50,000/- towards conventional heads *i.e.* loss of love and affection, funeral expenses and last rites. So, the appellants of FAO No.1390 shall be entitled to a sum of Rs.5,00,000/- as compensation on account of death of their son Ajay in this accident.

7. Smt. Kiran Sharma and others appellants of FAO No.1391 are seeking compensation on account of death of Subhash son of Telu Ram in this accident. The learned Tribunal has awarded a total sum of Rs.5,55,000/- as compensation on account of death of said Subhash son of Telu Ram. The learned Tribunal has taken the income of the deceased as Rs.4800/- per month. He deducted $1/3^{rd}$ towards personal and living expenses of the deceased. The learned Tribunal has awarded very less amount towards loss of consortium and no amount has been awarded

towards loss of love and affection to the children.

8. I do not find any substance in the plea raised by learned counsel for the respondent that as the deceased was treated only as a labourer and was not holding any permanent job, so the future prospects were not required to be added towards his income. It is a fact of common knowledge that with the passage of time the earnings of even a casual labourer increases. So, it cannot be stated that there is no future prospects of advancement in the earning of the casual labourers. 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 (2013) 9 SCC 54***, 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."*
>
> *The deceased being of the age of 30 years, 50% is the required addition."*

9. Thus, the learned Tribunal was required to add the future prospects towards the income of the deceased. The appellants have not led any evidence to prove the definite age of deceased Subhash son of Telu Ram. His age has been mentioned about 40 years. So, it can also be above 40 years. So, the future prospects of 30% is required to be added to the income of the deceased. The total income of the deceased after adding the future prospects comes to Rs.6240/- per month i.e. Rs.74,880/- per annum. 1/3rd of his income was to be deducted towards his living and personal expenses. The remainder comes to Rs.49,920/-. The multiplier of 14 shall be applicable in view of the age of the deceased. The multiplicand comes to Rs.6,98,880/-.

10. In addition to the aforesaid amount, the appellants shall be entitled to sum of Rs.25,000/- towards funeral and transportation expenses. The claimant No.1 the widow of Subhash shall be entitled to a sum of Rs.1,00,000/- towards loss of consortium. His minor daughter Rakhi Sharma shall also be entitled to Rs.1,00,000/- towards loss of care, love and affection. In this manner, the claimants of FAO No.1391 of 2013 shall be entitled to a total amount of compensation of Rs.9,23,880/- instead of Rs.5,50,000/- awarded by the learned Tribunal.

11. Smt. Santosh Devi and others appellants of FAO No.1392 of 2013 have filed the claim petition for grant of compensation on account of death of Subhash son of Nathu Ram in this accident. The

learned Tribunal has awarded compensation of Rs.5,55,000/- to the appellants. The learned Tribunal has taken the income of the deceased as Rs.4800/- per month. He deducted 1/3rd towards personal and living expenses of the deceased. The learned Tribunal has awarded very less amount towards loss of consortium and no amount has been awarded towards loss of love and affection to the children.

12. The learned Tribunal has not added anything towards future prospects of the income of the deceased. In view of the legal position discussion above, the future prospects should have been added to the income of deceased Subhash son of Nathu Ram in order to compute the compensation.

13. The appellants have not led any evidence to prove the definite age of deceased Subhash son of Nathu Ram. His age has been mentioned about 40 years. So, it can also be above 40 years. So, the future prospects of 30% is required to be added to the income of the deceased. The total income of the deceased after adding the future prospects comes to Rs.6240/- per month i.e. Rs.74,880/- per annum. 1/3rd of his income was to be deducted towards his living and personal expenses. The remainder comes to Rs.49,920/-. The multiplier of 14 shall be applicable in view of the age of the deceased. The multiplicand comes to Rs.6,98,880/-.

14. In addition to the aforesaid amount, the appellants shall be entitled to sum of Rs.25,000/- towards funeral and transportation expenses. The claimant No.1 the widow of Subhash Chand son of Nathu Ram shall be entitled to a sum of Rs.1,00,000/- towards loss of

consortium. His minor children i.e. claimants No.2 Ravinder and claimant No.3 Tannu shall also be entitled to Rs.1,00,000/- towards loss of care, love and affection. In this manner, the claimants of FAO No.1392 of 2013 shall be entitled to a total amount of compensation of Rs.9,23,880/- instead of Rs.5,50,000/- awarded by the learned Tribunal.

15. Thus, keeping in view my aforesaid discussion, all the appeals mentioned above are partly allowed. The award of compensation to appellants-claimants Smt.Toshi and another in FAO No.1390 of 2013 is enhanced to Rs.5,00,000/- from Rs.2,50,000/-; the award of compensation to appellants-claimants Smt. Kiran Sharma and others in FAO No.1391 of 2013 is enhanced to Rs.9,23,880/- from Rs.5,50,000/-; and the award of compensation to appellant-claimant Smt. Santosh Devi and others in FAO No.1392 of 2013 is enhanced to Rs.9,32,880/- Rs.5,50,000/-, as awarded by the learned Tribunal. The appellants-claimants in all the appeals shall be entitled to interest @ 6% per annum, as awarded by learned Tribunal, on the enhanced amount from the date of filing the petition till realisation. The mode of disbursement of the awarded amount and the liability shall remain as determined by the learned Tribunal.

18.02.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**