IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 10.03.2016.

FAO No.1432 of 2013

Neelam Devi and others ....Appellants.

VERSUS

Tek Bahadur @ Tek and others ....Respondents.

WITH

FAO No.1477 of 2013 (O&M)

The New India Assurance Company Limited ....Appellant.

VERSUS

Neelam Devi and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ashwani Arora, Advocate
for the appellants (in FAO No.1432 of 2013)
and respondents No.1 to 3 (in FAO No.1477-2013).

Mr. D.K. Prajapati, Advocate
for the appellant (in FAO No.1477 of 2013) and
for respondent No.3 (in FAO No.1432 of 2013).

Mr. Arun Kumar, Advocate for
Mr. A.P. Singh, Advocate
for respondent No.2 (in FAO No.1432 of 2013) and
for respondent No.5 (in FAO No.1477 of 2013).

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SNEH PRASHAR, J.

The above captioned two first appeals had arisen from an award dated 25.08.2012 passed by learned Motor Accident Claims Tribunal, SAS Nagar, Mohali (for short, "the Tribunal") in MACT Case No.77 of 21.07.2010 by virtue of which legal heirs (claimants) of deceased Sunil Datt, who lost his life in a motor vehicular accident, were awarded compensation. Both shall be disposed of by this common judgment.

On 09.07.2010, Sunil Datt, who was employed as a Senior Accountant with A.G., Punjab (A&E), Sector-17, Chandigarh, was standing with his scooter on the slip road of Moddella Light Points when a truck bearing registration No.HR-37A-0411 (hereinafter referred to as "the offending truck") being driven rashly, negligently and in a high speed by Tek Bahadur @ Tek (respondent No.1) came and hit his scooter from the backside. Due to the impact, Sunil Datt fell and sustained serious multiple injuries. On being taken to G.M.C.H., Sector-32, Chandigarh, he was declared brought dead.

The widow, daughter and son (legal representatives) of deceased Sunil Datt filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation from the driver, owner and insurer (respondents in the petition) of the offending truck for his untimely death. The petition was contested by the respondents. Respondents No.1 and 2 denied the occurrence of accident involving the offending truck. Respondent No.3 besides denying the accident raised all preliminary objections available to the insurer under the Act of 1988.

On the basis of the rival pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the petition and awarded Rs.29,02,000/- as compensation to the claimants (appellants in FAO No.1432 of 2013) and held the respondents jointly and severally liable for payment of the compensation amount.

Feeling dissatisfied, the appellants-claimants filed the appeal seeking enhancement of the compensation amount. The appellant-insurance company also assailed the award alleging the compensation to be highly excessive.

The submissions made by learned counsel for the parties have been heard and record perused.

The only argument raised by learned counsel for the appellant-insurance company is that learned Tribunal wrongly calculated the loss of dependency based on the monthly income of the deceased without deducting the amount paid towards income tax from the monthly income of the deceased. The income tax liability could not be part of the actual income.

On the other hand, learned counsel for the appellants-claimants though conceded that the amount liable to be paid towards income tax by the deceased was not deducted by learned Tribunal, but he pointed out that the monthly income itself of the deceased was wrongly assessed. PW3 Ram Pal, Senior Accounts Officer of the Office of Accountant General Punjab proved the salary certificate Ex.P10 of the deceased wherein the details of the revised salary which was due to be allowed to the deceased were mentioned. The salary being drawn was stated as Rs.35,134/- but the revised (due) salary was mentioned as Rs.39,226/-. The increased salary was to be paid w.e.f. 01.01.2006 on account of enhancement of pay by the Pay Commission. The accident occurred on 09.07.2010. On enhancement of the salary w.e.f. 01.01.2006 the deceased was entitled to the revised salary on the date of his death and it was that amount which should have been taken as basis for assessing the dependency of the claimants, but learned Tribunal erred in taking the old monthly salary of deceased i.e. Rs.35,134/- for calculating loss of dependency. Learned Tribunal also erred in clubbing together loss of consortium, loss of estate and funeral expenses etc. and awarded only Rs.20,000/- towards the same.

Indeed, in the salary certificate Ex.P10 the revised salary of the deceased due to be allowed to him on enhancement of salary by the Pay Commission w.e.f. 01.01.2006 was specifically mentioned as Rs.39,226/- per month i.e. Rs.4,70,712/- per annum. The said revised amount of salary should have been taken as income of the deceased as it was due to be paid to him much prior to his death. Since the deceased had the liability of paying income tax on the salary, the said amount comes to Rs.22,071/- and the actual income amount comes to Rs.4,48,641/- per annum. As stated by PW3 an amount of Rs.800/- per month was included in the salary of the deceased towards transport allowance. The said amount was being spent by the deceased on his daily travelling and needs to be deducted while assessing the monthly income. Deducting Rs.9,600/- (800 x 12) towards transport allowance, the amount of salary of the deceased comes to Rs.4,39,041/- which is assessed as annual monthly income of the deceased. To make it a round fingure, the same is taken as Rs.4,39,000/-.

PW3 Ram Pal, Senior Accounts Officer stated that the date of birth of the deceased was 29.10.1957 and he was due to retire on 31.07.2017 which proves that the retirement age of the deceased was 60 years. He still had seven more years of service to his credit. However, after retirement the income of the deceased would have come down to the amount of pension to which he was entitled. The amount of pension comes to Rs.2,19,500/- per annum. The deceased was survived by widow Neelam Devi, daughter Tanu Datt and a son Ragha Datt. Therefore, as per the law laid down in ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77*** the deduction of 1/3rd towards personal and living expenses of the deceased was rightly made by learned Tribunal.

The deceased being 53 years old had seven years service to his credit. In Sarla Verma and others' case (supra), it has been laid down by Hon'ble Apex Court that where the deceased had a permanent job and was below 40 years an addition of 50% of the actual salary is to be added towards future prospects; where the deceased is below 40-50 years addition should be of 30%; but where the deceased is more than 50 years no addition should be made. The law laid down in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170*** is as under:-

"In Sarla Verma's case (supra), it has been stated that in

the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

In the case in hand, neither the deceased was self employed nor was on fixed wages. The age of superannuation was 60 years. As such, neither in view of the law laid down in Sarla Verma's case (supra) nor as per the ratio of Rajesh and others' case (supra) any addition to the actual income of the deceased towards future prospects could be allowed. Accordingly, the total compensation payable to the appellants-claimants is calculated as under:-

1.	Annual income of the deceased (in Rupees)		Rs.4,39,000/-
2.	Actual age of the deceased		53 years
3.	Dependency		2/3 of Rs.4,39,000/- = 2,92,666/-
4.	Multiplier as per Sarla Verma and others' case (supra) (to be broken into 2 parts if multiplier spills over the age of 60 years. Before + after superannuation.		11 (7+4)
5.	Compensation for full salary period i.e. upto 60 years (rounded of)		Rs.20,48,662/-
6.	Compensation for pension period i.e. after 60 years		Rs.5,85,332/-
7.	Total compensation (column No.6 + 7) (in round figure)		Rs.26,34,000/-

In addition to the amount of Rs.26,34,000/- calculated towards dependency, an amount of Rs.1,00,000/- towards loss of consortium; an amount of Rs.25,000/- towards funeral expense; and Rs.10,000/- towards loss estate is allowed which shall include the amount of Rs.20,000/- already awarded by learned Tribunal under the heads of loss of consortium, loss of estate and funeral expenses etc. A further amount of Rs.1,50,000/- is awarded to the appellants-claimants No.2 and 3 for loss of love and affection so that the amount of compensation already awarded by learned Tribunal can be made at par. In the above premise, the appellants-claimants are held entitled to compensation of Rs.29,19,000/- as indicated above. The rate of interest allowed by learned Tribunal shall remain the same.

In the above premises, the appeal filed by the claimants as well as the appeal filed by the insurance company are partly allowed. Accordingly, the award dated 25.08.2012 passed by the Tribunal is modified. The enhanced compensation of Rs.17,000/- shall be deposited by respondent No.3- insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

10.03.2016.
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