

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

(1)

**FAO No.10370 of 2014 (O&M)
Date of decision : 16.12.2016**

Sandeep

.....Appellant

Versus

Avtar Singh and others

...Respondents

(2)

**FAO No.10402 of 2014 (O&M)
Date of decision : 16.12.2016**

Smt. Saroj Devi and others

.....Appellants

Versus

Avtar Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. Ashok K. Sharma, Advocate for appellants
in both the appeals.

Mr. Sandeep Suri, Advocate for respondent No.3-
Insurance Company in both the appeals.

DARSHAN SINGH, J.

**CM-28590-CII-2014 and
CM-28591-CII-2014 in
FAO-10370-2014**

Heard. For the reasons mentioned in the applications, same
are allowed and the delays of 123 days in re-filing the appeal and 72 days
in filing the appeal are hereby condoned.

Main Appeals

This judgment shall dispose of both the appeals captioned above, which have arisen out of the same award dated 01.11.2013 passed by the learned Motor Accidents Claims Tribunal, Jind (hereinafter called the “Tribunal”), whereby the claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”) for grant of compensation filed by the appellants-claimants of both the appeals have been partly allowed and appellant-claimant Sandeep has been awarded compensation to the tune of ₹59,200/- on account of the injuries suffered by him and appellants-claimants Smt. Saroj Devi and others have been awarded compensation to the tune of ₹7,94,000/- on account of death of Om Parkash, in the motor vehicular accident which took place on 22.10.2012.

2. Both the appeals have been preferred by the appellants-claimants for enhancement of the amount of compensation.

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

4. In FAO No.10402 of 2014, learned counsel for the appellants contended that learned Tribunal has not awarded the just amount of compensation. He further contended that the learned Tribunal has not awarded the future prospects to the income of the deceased. No amount has been awarded to the children and mother of the deceased towards loss of love and affection.

5. On the other hand, learned counsel for the respondent-

Insurance Company contended that the deceased 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 has 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. On appreciation of the oral as well as documentary evidence, the learned Tribunal has rightly determined the income of the deceased to be ₹4500/- per month treating him to be a labourer, which does not call for any interference. However, the learned Tribunal has not added any future prospects to the income of the deceased. The deceased was a young man of 32 years of age. He was hale and hearty. Even if he was working as a labourer, his income was bound to increase with the passage of time. So, the future prospects should have been added to the income of the deceased. In view of the age of the deceased, 50% of his income is required to be added towards future prospects. The total income of the deceased comes to ₹6750/- per month *i.e.* ₹81,000/- per annum. Keeping in view the number of dependent family members, 1/4th of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to ₹60,750/-. The learned Tribunal has rightly applied the multiplier of 16 taking into consideration the age of the deceased. Thus, the compensation on account of loss of dependency comes to ₹9,72,000/-.

8. The learned Tribunal has rightly awarded a sum of ₹1,00,000/- to appellant-claimant Smt. Saroj Devi towards loss of consortium, ₹25,000/- to the appellants-claimants on account of funeral and last rites expenses and ₹5000/- towards loss to estate. However, learned Tribunal has not awarded any amount to the minor children and mother of the deceased towards loss of love and affection. Appellants-claimants No.2 and 3, the minor children of the deceased shall be entitled to ₹1,00,000/- towards loss of love, care and guidance of their father. Appellant-claimant No.4 Smt. Beero, mother of the deceased, shall also be entitled to a sum of ₹1,00,000/- on account of loss of love and affection of her son. Total amount of compensation payable to the appellants-claimants in FAO No.10402 of 2014 comes to ₹13,02,000/-.

9. In FAO No.10370 of 2014, learned counsel for the appellant-claimant contended that no amount has been given on account of 3% disability suffered by the claimant.

10. On the other hand, learned counsel for the respondent-Insurance Company contended that the claimant has not suffered any loss of future income due to this minor disability suffered by him, so he was not entitled for any compensation.

11. I have duly considered the aforesaid contentions.

12. No doubt the claimant has not adduced any evidence to establish that on account of this minor disability of 3% due to fracture of femur the appellant-claimant has suffered any future loss of income,

however, as the claimant has suffered 3% disability on account of the injuries received in this accident, so he must be suffering some physical inconvenience and will be entitled to ₹6000/- on this account. In this way, the total amount payable to appellant-claimant Sandeep comes to ₹65,200/-.

13. Thus, keeping in view my aforesaid discussion, both the FAOs filed by the appellants-claimants are hereby partly allowed. In FAO No.10370 of 2014 filed by appellant Sandeep, the amount of compensation payable to the appellant-claimant is enhanced to ₹65,200/- from ₹59,200/- as awarded by the Tribunal. In FAO No.10402 of 2014 filed by appellants Saroj and others, the amount of compensation payable to the appellants-claimants is enhanced to ₹13,02,000/- from ₹7,94,000/- as awarded by the Tribunal. The appellants of both the appeals shall also be entitled to interest on the enhanced amount of compensation at the same rate as determined by the learned Tribunal from the date of filing the petition till realisation. The liability to pay the enhanced amount of compensation and the apportionment amongst the claimants shall remain same as determined by the learned Tribunal in the main award.

14. 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-Insurance Company, the amount of compensation under the head future prospects shall be disbursed to the

appellants/claimants in FAO No.10402 of 2014 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.

16.12.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No