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

**FAO-2623-2013 (O&M)**
**Date of decision: 25.04.2016**

Urmila and others

...Appellants

Versus

National Insurance Co. Ltd. and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Ms. Kamalpreet, Advocate
for the appellants.

Mr. Ashwani Talwar, Advocate and
Mr. Akash Sridhar, Advocate
for respondent No.1.

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**JITENDRA CHAUHAN, J.**

CM No.12010-CII of 2013

CM is allowed and Annexures A-1 and A-2 are taken on record, subject to all just exceptions.

CM No.12011-CII of 2013

CM is allowed, as prayed for, subject to all just exceptions.

CM No.12012-CII of 2013

After hearing the learned counsel for the parties and for the reasons contained in the application, which is duly supported by affidavit, same is allowed and delay of 138 days in filing the present appeal is condoned, subject to all just exceptions.

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CM No.12013-CII of 2013

The appellants have sought to produce on record death certificate of the father of the deceased (Annexure A-1) and affidavit of Smt. Shakuntla @ Shanti, mother of deceased (Annexure A-2) by way of additional evidence.

It is asserted that father of the deceased, Rajender Singh had already died and mother, Smt. Shakuntla @ Shanti is not interested in securing part of the claim, which is not controverted by respondent No.1, therefore, in deference to the desire expressed by the mother the entire amount may be ordered to be released in favour of the claimants.

In view of the grounds mentioned in the application and after hearing the learned counsel for the parties, it is established that evidence sought to be produced by way of additional evidence could not be produced by the appellants after exercise of due diligence at the time of leading evidence before the Tribunal.

In these circumstances, the civil miscellaneous application is allowed and the documents (Annexures A-1 and A-2) are taken on record subject to all just exceptions.

Main Case

This is claimants' appeal seeking enhancement of the amount of compensation awarded vide impugned award dated 01.08.2012, passed by learned Motor Accidents Claims Tribunal, Rohtak, (for short, 'the Tribunal').

The learned counsel for the appellants contends that the

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deceased, Rajinder Singh was 34 years at the time of accident, therefore, learned Tribunal ought to have applied multiplier of 16 instead of multiplier of 13 in view of the law laid down by Hon'ble Supreme Court in ***Sarla Verma v. DTC (2009) 6 SCC 121.*** Nothing has been awarded towards loss of love & affection. Lastly, he submits that the amount awarded under the conventional heads are on the lower side and deserves to be enhanced.

On the other hand, the learned counsel for respondent No.1 has vehemently opposed the present appeal and states that a just and reasonable compensation has already been awarded to the appellants.

I have heard the learned counsel for the parties and carefully perused the entire record.

It is not in dispute that the deceased was 34 years of age at the time of his death. As per Haryana Compassionate Assistance to the Dependants of the Deceased Government Employees Rules, 2006, full last drawn salary will be given for 15 years to the dependants of the deceased and as such by applying the ratio of ***Oriental Insurance Company Ltd. VS. Saroj Devi and others*** (FAO No.589 of 2010, decided on 21.12.2011), the learned Tribunal rightly assessed the notional age as 49 years. Since deceased had left behind four family members viz., widow, minor son, minor daughter and mother, as per Sarla Verma's case (supra), after deducting 1/4$^{th}$ of the income of the deceased i.e. Rs.2437/- as personal expenses, the monthly dependency has rightly been assessed by the learned Tribunal as Rs.7311/-. The

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Tribunal has correctly taken the future prospects as 30% and the multiplier to be 13. The loss of dependency has thus been rightly calculated by the learned Tribunal at Rs.14,82,624/-. However, the learned Tribunal after determination of the loss of dependency wrongly held that the petitioner-appellants are entitled to only 3/5$^{th}$ share of the said amount. This Court feels that in view of the fact that mother of the deceased has desired by way of affidavit (Annexure A-2) that the amount given to her by the Tribunal be released in favour of the other dependants i.e. appellants and that father of the deceased has since expired, the total amount of Rs.14,82,624/- on account of loss of dependency shall be given to the appellants which includes the amount earmarked by the learned Tribunal for the parents of the deceased.

Furthermore, nothing has been awarded towards loss of love and affection, therefore, following the law laid down in ***Vimal Kanwar and others Vs. Kishore Dan and others,*** (2013-3) PLR 776, amount of ₹1,00,000/- awarded towards loss of love and affection shall be payable to the children of the deceased, in equal shares.

As per the law laid down in ***Rajesh Vs. Rajbir Singh***, 2013 (3) RCR (Civil) 170 (SC), another amount of ₹95,000/- towards loss of consortium awarded to the wife of the deceased, only.

In view of the above, the claimants are held entitled to the enhanced compensation of ₹7,88,050/- [₹5,93,050/- (enhancement towards 'loss of dependency') + ₹1,00,000/- (towards loss of love and affection payable to the children of the deceased, in equal shares) +

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₹95,000/- (enhancement towards loss of consortium payable to the wife of the deceased only)] as indicated above, in the manner prescribed in the impugned award, over and above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal, till its realization.

With the aforesaid modification in the impugned award, the present appeal is partly allowed.

**25.04.2016** **( JITENDRA CHAUHAN)**
ashok **JUDGE**

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