IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(1) **FAO No.1549 of 2014**

Date of decision : 02.12.2016

Sushila @ Sheela

......Appellant

Versus

Krishan Kumar and others

...Respondents

(2) **FAO No.1550 of 2014**

Date of decision : 02.12.2016

Sushila @ Sheela

......Appellant

Versus

Krishan Kumar and another

...Respondents

(3) **FAO No.1565 of 2014**

Date of decision : 02.12.2016

Sushila @ Sheela

......Appellant

Versus

Krishan Kumar and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. Sandeep Kotla, Advocate for appellants in all the appeals.

Ms. Sheenu Sura, Advocate for respondent-Insurance Company in all the appeals.

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DARSHAN SINGH, J.

This judgment shall dispose of all the three appeals captioned above, which have been arisen out of the same award dated 29.11.2013 passed by the learned Motor Accidents Claims Tribunal, Hisar (hereinafter called the "Tribunal"), whereby the three claim petitions filed by the appellant-claimant Smt. Sushila alias Sheela under Section 163-A of the Motor Vehicles Act, 1988 (for short the "Act") for grant of compensation on account of death of her husband Devender, on account of injuries suffered by her and on account of death of her minor son Ritik in the motor vehicular accident which took place on 28.06.2012, have been partly allowed and she has been awarded compensation to the tune of ₹3,91,000/-, ₹68,800/- and ₹1,62,000/-, respectively, along with the interest at the rate of 7.5% per annum from the date of filing the claim petitions till realization.

2. All the three appeals have been filed by the appellants-claimants for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and have gone through the record of the case meticulously.

4. Learned counsel for the appellants contended that the learned Tribunal has not awarded the just compensation. The income of

deceased Devender has been taken to be less. No separate amount has been awarded under any conventional head. He further contended that appellant-claimant Sushila has also lost her son Ritik aged about 09 years in this accident, but the learned Tribunal has only awarded the compensation of ₹1,62,000/-.

5. He further contended that claimant Sushila has also suffered the serious injuries in this accident. She suffered 7% permanent disability. The learned Tribunal has awarded only ₹68,800/- as compensation. Thus, he contended that the compensation awarded by the learned Tribunal in all the cases is highly inadequate.

6. On the other hand, learned counsel for the respondent-Insurance Company contended that the present claim petitions have been filed by the appellants-claimants under Section 163-A of the Act. The learned Tribunal has rightly calculated the compensation as per the Second Schedule and there is no scope of any further enhancement.

7. I have duly considered the aforesaid contentions.

8. Firstly, I take up FAO No.1549 of 2014. In this case appellant-claimant Sushila alias Sheela has claimed the compensation on account of death of her husband Devender. The learned Tribunal has awarded a sum of ₹3,91,000/- as compensation to the appellant. As per the case of the appellant-claimant deceased Devender was earning ₹3300/- per month. This accident has taken place on 28.06.2012. In those days a person could have easily earned ₹110/- per day even by doing a casual job. So, the learned Tribunal was not justified to take the income

of ₹3000/- per month instead of ₹3300/- per month as claimed by the appellant-claimant. So, the income of the deceased shall be taken to be ₹3300/- per month *i.e.* ₹39,600/- per annum. 1/3rd of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to ₹26,400/-. Deceased Davinder was 30 years of age at the time of the accident, so multiplier of 17 shall be applicable. The multiplicand comes to ₹4,48,800/-. In addition to that appellant-claimant shall be entitled to ₹5000/- towards loss of consortium, ₹2500/- towards loss to estate and a sum of ₹2000/- towards funeral expenses. Thus, the total amount of compensation payable to appellant-claimant on account of death of her husband Devender comes to ₹4,58,300/-.

9. Now I take up FAO No.1565 of 2014. There is no dispute to the fact that the appellant-claimant has lost her 09 years old son in the present accident. This fact cannot be lost sight that no amount of compensation can compensate for the loss of life, nor can bring back the happiness in the lives of the dependant family members. However, it becomes the duty of the Court to award the just and appropriate compensation to them.

10. The present claim petition has been filed under Section 163-A of the Act. The age of the deceased child was about 09 years. Thus, admittedly he was a non-earning person and the notional income of the deceased has to be taken into consideration to compute the compensation as per the Second Schedule appended to the Act. Thus, the notional income of the deceased can be taken to be ₹15,000/- per annum.

11. As per the age of the deceased, the multiplier of 15 shall be applicable. The multiplicand comes to ₹2,25,000/-. In the present case, the deceased was a male child of 09 years. Certainly, the appellant-claimant being the mother of the deceased child had undergone lot of pain and suffering on account of loss of her son. So, she will be further entitled to ₹50,000/- on account of pain, suffering and shock. The total amount of compensation payable to the appellant-claimant on account of death of her minor son Ritik comes to ₹2,75,000/-.

12. Now I take up FAO No.1550 of 2014. In this case the appellant-claimant Sushila alias Sheela has claimed compensation on account of injuries suffered by her in this accident. The learned Tribunal has awarded total sum of ₹68,800/- as compensation to her on account of the injuries suffered by her. The learned Tribunal has awarded a sum of ₹20,000/- for the grievous injuries suffered by her, a sum of ₹15,000/- have been awarded for permanent disability, a sum of ₹28,800/- have been awarded on account of medical expenses and a sum of ₹5000/- have been awarded on account of pain and suffering. It is settled principle of law that in a petition filed under Section 163-A of the Act the compensation is to be computed as per the structured formula provided in the Second Schedule appended to the Act, which provides that the claimant who has suffered the grievous injuries shall be entitled to ₹5000/- on account of pain and suffering. In this case the learned Tribunal has awarded ₹20,000/- on the ground that the appellant-claimant has suffered the grievous injuries and further ₹5000/- for pain and

suffering *i.e.* total ₹25,000/-. Though, she was only entitled under this head for ₹5000/-. No doubt she has been awarded a lump sum of ₹15,000/- on account of 7% permanent disability suffered by her. But if the calculation is made by taking into consideration ₹3000/- per month as the notional income of the injured-claimant as she was a house wife, 5% is taken as the functional disability and 17 is applied as the multiplier, the compensation payable for permanent disability will come to ₹30,600/-, but the learned Tribunal has already awarded ₹20,000/- for grievous injuries and ₹15,000/- in lump sum for disability *i.e.* total ₹35,000/-, which is more than the amount which could be payable to the claimant on her permanent disability. Thus, no enhancement of the compensation is permissible in this case.

13. Thus, keeping in view my aforesaid discussion, FAO No.1550 of 2014 filed by appellant-claimant has no merits and the same is hereby dismissed. However, FAO No.1549 of 2014 and FAO No.1565 of 2014 filed by the appellants-claimants are hereby partly allowed. The amount of compensation payable to the appellant-claimant in FAO No.1549 of 2014 is enhanced to ₹4,58,300/- from ₹3,91,000/- as awarded by the Tribunal. In FAO No.1565 of 2014 the amount of compensation payable to the appellant-claimant is enhanced to ₹2,75,000/- from ₹ 1,62,000/- as awarded by the learned Tribunal. In these two appeals, the appellants-claimants shall also be entitled to interest on the enhanced amount of compensation at the 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 shall remain same as determined by the learned Tribunal in the main award.

02.12.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No