IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(1) **FAO No.1027 of 2015**
Date of decision : 02.06.2016

Mrs. Sadika and others

......Appellants

Versus

Sakir Khan and others

...Respondents

(2) **FAO No.3030 of 2015 (O&M)**

Mohd. Shahbuddin and another

......Appellants

Versus

Sakir Khan and others

...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. Kunal Dawar, Advocate for appellants in FAO No.1027 of 2015 and for respondents No.4 to 6 in FAO No.3030 of 2015.

None for respondents No.4 & 5 in FAO No.1027 of 2015 and for appellants in FAO No.3030 of 2015.

Mr. R.N. Singal, Advocate for respondent No.3-Insurance Company.

Respondents No.1 & 2 proceeded against *ex parte* in FAO No.3030 of 2015.

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DARSHAN SINGH, J.

This judgment shall dispose of both the appeals mentioned above as both these appeals have been arisen out of the same award dated 20.10.2014, passed by learned Motor Accidents Claims Tribunal, Faridabad (hereinafter called the 'Tribunal'), vide which the learned Tribunal has awarded compensation to the appellants-claimants to the tune of Rs.9,77,000 on account of death of Safi Khan, in the motor vehicular accident which took place on 20.03.2013.

2. FAO No.1027 of 2015 has been filed by claimants No.1 to 3 and FAO No.3030 of 2015 has been filed by claimants No.4 & 5 for enhancement of the amount of compensation.

3. Mr. Kunal Dawar, Advocate, learned counsel for the appellants in FAO No.1027 of 2015 contended that the deceased was only 27 years of age. He was a driver by profession. The learned Tribunal has not awarded any future prospects towards income of the deceased. He further contended that learned Tribunal has also wrongly deducted 1/3rd of the income of the deceased towards his personal and living expenses. In view of the number of the dependents, it should be 1/4th. He further contended that no amount has been awarded towards loss of love and affection. Less amount has been awarded towards loss of consortium and funeral expenses. Thus, he contended that the compensation awarded by the learned Tribunal is highly inadequate.

4. On the other hand, learned counsel for the respondent-Insurance Company contended that just compensation of Rs.9,77,000/- has been awarded by the learned Tribunal taking into consideration all the

permissible heads. He contended that no future prospects were required to be added to the income of the deceased as he was not having any permanent job carrying regular increments. He further contended that moreover, the matter regarding future prospects has been referred to the larger Bench by the Hon'ble Apex Court. Thus, he contended that no further enhancement of the amount of compensation will be justified.

5. I have duly considered the aforesaid contentions.

6. As per the case of the appellants-claimants, deceased Safi Khan was working as a driver with one Irfan and was getting salary at the rate of Rs.8000/- per month. He was 28 years of age at the time of the death. But the appellants-claimants have not produced any documentary evidence to establish that the deceased was working as a driver with Irfan and was getting Rs.8000/- per month as salary. However, the learned Tribunal keeping in view the driving licence of the deceased, treated him as a driver and rightly determined his monthly income to be Rs.7000/- per month.

7. The learned Tribunal keeping in view the date of birth of deceased mentioned in his Middle Examination Certificate Ex.P3, determined the age of the deceased as 27 and half years at the time of his death. The learned Tribunal has not awarded any future prospects towards the income of the deceased. The deceased was a driver by profession. He was 27 and half years of age. So, he was a young skilled person. His income was bound to increase with the passage of time. There is no denial to the fact that the matter regarding future prospects has been referred to the larger Bench of the Hon'ble Apex Court in case ***National Insurance Company Ltd. Vs. Pushpa and others 2015 (9) SCC 166,*** but in a later 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."*
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> *The deceased being of the age of 30 years, 50% is the required addition."*

8. In view of the age of the deceased, 50% of his income is required to be added towards the future prospects. The total income of the deceased comes to Rs.10,500/- per month *i.e.* Rs.1,26,000/- per annum. The learned Tribunal has wrongly deducted 1/3rd of the income of the deceased towards his personal and living expenses. The claim petition has been filed by the widow, two minor children, mother and father of the deceased. Even if we do not consider the father of the deceased to be dependent upon him, there were four dependents upon the income of the deceased. So, 1/4th of the

income of the deceased should have been deduced towards his living and personal expenses. The remainder comes to Rs.94,500/-. In view of the age of the deceased, multiplier of 17 shall be applicable. So, the loss of dependency comes to Rs.16,06,500/-.

9. The learned Tribunal has awarded only Rs.25,000/- as loss of consortium and no compensation under other conventional head has been awarded. Appellant-claimant No.1 Ms.Sadika the widow of deceased Safi Khan shall be entitled to Rs.1,00,000/- towards loss of consortium. Minor children of deceased Safi Khan namely baby Amreen and master Ayaan shall also be entitled to Rs.1,00,000/- on account of loss of love, care and guidance. The mother of deceased shall also be entitled to a sum of Rs.1,00,000/- on account of loss of love and affection of her son. The appellants-claimants shall also be entitled to Rs.25,000/- towards funeral and transportation charges. The total amount of compensation comes to Rs.19,31,500/-.

10. Thus, keeping in view my aforesaid discussion, both the appeals are hereby partly allowed and the amount of compensation is enhanced to Rs.19,31,500/- from Rs.9,77,000/-, as awarded by the learned Tribunal. The liability to pay the amount of compensation, interest and apportionment amongst the claimants shall be as per the award passed by the learned Tribunal.

02.06.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**