IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) **FAO No.3689 of 2013 (O&M)**

Date of decision : 02.12.2016

New India Assurance Company Limited, Kurukshetra

......Appellant

Versus

Om Parkash and others

...Respondents

(2) **FAO No.5243 of 2013**

Date of decision : 02.12.2016

Om Parkash and others

......Appellants

Versus

Som Nath and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate for appellant-Insurance Company in FAO No.3689 of 2013 and for respondent No.6 in FAO No.5243 of 2013.

Mr. Navmohit Singh, Advocate for respondents No.1 to 5 in FAO No.3689 of 2013 and for appellants in FAO No.5243 of 2013.

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DARSHAN SINGH, J.

This judgment shall dispose of both the appeals captioned above, which have been arisen out of the same award dated 20.05.2013 passed by the learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter called the "Tribunal"), whereby the claim petition filed by the appellants-claimants of FAO No.5243 of 2013 under Section 166 of the Motor Vehicles Act, 1988 (for short the "Act") for grant of compensation on account of death of Virender in the motor vehicular accident which took place on 14.09.2011, has been allowed and they have been awarded compensation to the tune of ₹8,02,600/- along with the interest at the rate of 6% per annum from the date of filing the claim petition till realization.

2. FAO No. 3689 of 2013 has been filed by the New India Assurance Company Limited, which was impleaded as respondent No.3 and respondent No.6 in the claim petition, to assail the award. FAO No.5243 of 2013 has 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 appellant-Insurance Company contended that deceased Virender was only 15 years of age at the time of the accident. In fact he was a non-earning person. The learned Tribunal has wrongly taken the income of the deceased to be ₹5400/- per month. He further contended that the learned Tribunal has also wrongly applied the multiplier as per the age of the deceased, while it should have been applied as per the age of the parents of the deceased. Moreover, he contended that even as per the age of the deceased, as he was below 15

years of age, the multiplier of 15 would have been applicable. The learned Tribunal has wrongly applied the multiplier of 18. He further contended that the learned Tribunal has wrongly deducted 1/3rd of the income of the deceased. The deceased was unmarried. Claimants No.3 to 5 were the sisters of the deceased, who cannot be considered to be the dependent upon the income of the deceased.

5. On the other hand, learned counsel for the appellants-claimants contended that the learned Tribunal has correctly assessed the income of the deceased. He was working as a salesman and was earning ₹10,000/- per month but the learned Tribunal has determined the income of the deceased taking him to be an unskilled labourer. He further contended that the learned Tribunal has not awarded any future prospects towards the income of the deceased. No amount has been awarded to the parents of the deceased towards love and affection.

6. I have duly considered the aforesaid contentions.

7. As per the case of the claimants, deceased Virender was working as a salesman and was earning ₹15,000/- per month. He was 19 years of age. Ex.P5 is the copy of the postmortem report wherein the age of the deceased has been mentioned to be 19 years. Mark-G is the copy of the ration card of the family of the deceased which shows that the age of deceased Virender has been mentioned to be 11 years in August 2008. In that way, the age of the deceased would come less than 15 years. The learned Tribunal has mentioned that the deceased would have attained the majority very shortly. The combined reading of postmortem report Ex.P5

and ration card Mark-G, it can safely be concluded that the deceased may in the age group of 16 to 18 at the time of his accidental death.

8. Mere this fact that deceased has not yet attained the majority, is no ground to consider him to be a non-earning person. It is a common fact that keeping in view the circumstances and needs of the family even the young boys who had not attained the majority start working to provide financial assistance to their families. Thus, the plea raised by learned counsel for the respondent-Insurance Company that the deceased was a non-earning person carries no substance.

9. The Tribunal has taken the income of the deceased to be ₹5400/- per month treating him to be an unskilled labourer but this fact is not disputed that the deceased has not still attained the majority, so his income cannot be taken to be equal to a major unskilled labourer. He might be working as a helping hand. Thus the income of the deceased shall be taken to be ₹4200/- per month.

10. The learned Tribunal has not awarded any future prospects towards the income of the deceased. The deceased was shortly going to attain the majority and after that even by working as a labourer he could have easily earned much more. So, there were bright prospects of the increase of the income of the deceased. Keeping in view the age of the deceased, 50% of the income of the deceased shall be added towards the future prospects. The total income of the deceased comes to ₹6300/- per month *i.e.* ₹75600/- per annum.

11. The claimants in this case are the parents and sisters of

the deceased. This fact is not disputed that the deceased was unmarried. The sisters of the deceased shall be considered to be dependent upon their father Om Parkash. So, only the mother of the deceased shall be considered to be the dependent upon the deceased and 50% of his income shall be deducted towards his personal and living expenses. The remainder comes to ₹37,800/-. In view of the age of deceased Virender, the multiplier of 18 has been rightly applied by the learned Tribunal. So, the loss of dependency comes to ₹6,80,400/-.

12. In addition to that, the parents of the deceased shall also be entitled to a sum of ₹1,00,000/- on account of loss of love and affection of their son. They will also be entitled to ₹25,000/- towards funeral and last rites expenses. In this way, the total amount of compensation comes to ₹8,05,400.

13. Thus, keeping in view my aforesaid discussion, FAO No.3689 of 2013 filed by appellant-Insurance Company has no merits and the same is hereby dismissed. FAO No.5243 of 2013 filed by the appellants-claimants is hereby partly allowed. The amount of compensation payable to the appellants-claimants is enhanced to ₹8,05,400/- from ₹8,02,600/- as awarded by the Tribunal. 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 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 claimants 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.

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

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No