IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(I) FAO-1498-2015 (O&M)
Date of decision: 10.05.2016

National Insurance Co. Ltd.

...Appellant

Versus

Sudesh Kumari and others

...Respondents

(II) FAO-3272-2015 (O&M)

Sudesh Kumari and others

...Appellants

Versus

Arjan Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Lalit Garg, Advocate,
for the appellant/Insurance Company.

Mr. Mohit Garg, Advocate,
for the appellant/claimants.

Mr. ADS Sukhija, Advocate,
for the respondents-driver and owner.

JITENDRA CHAUHAN, J.

Two appeals, as noticed above, are being disposed of by this single judgment, having arisen out of the common impugned Award dated 31.10.2014, passed by learned Motor Accidents Claims Tribunal, Fatehabad (for short, 'the Tribunal').

Learned counsel for the Insurance Company contends that the FIR in the instant case was got registered on the statement of Devi Lal, PW7, who was not an eye witness to the occurrence. This witness is the real brother of Ram Kumar, who was alleged to be sitting on the offending vehicle. The driver of the offending vehicle, Arjan Ram, while appearing as RW1, has denied the factum of accident. Even if the version of the claimants is taken to be true, it being a case of head-on collision, is a case of contributory negligence. It is further contended that keeping in view the fact that the father of the deceased could not be considered as dependant upon the deceased, the deduction to the extent of $\frac{1}{4}^{th}$ is erroneous.

On the other hand, the learned counsel for the claimants contends that nothing has been awarded towards future prospects of the deceased. The amount awarded under the conventional heads is also inadequate.

I have heard learned counsel for the parties and perused the paper book.

In this case, the factum of the accident is duly proved.

The claimant-appellants, in support of their oral testimony, have relied upon documentary evidence in the form of FIR, final report under Section 173 Cr.P.C., etc. The claimants have examined Smt. Darshna as PW1, Shamsher as PW2, Sudesh Kumari as PW3, Ram Kumar as PW5 and Devi Lal as PW7, who have stated that the accident in question was caused due to rash and negligent driving of truck bearing registration No.RJ-07GA-0121. The driver, namely, Arjan Ram, while appearing as RW1, though denied the factum of accident but during his cross-examination, he admitted that FIR was recorded against him and he is also facing criminal proceedings. Furthermore, no evidence was led by the Insurance Company to prove that the accident was caused due to contributory negligence of both the drivers. In such circumstances, findings recorded by the learned Tribunal against Issue No.1, are hereby affirmed.

As far as the question of deduction is concerned, it is noticed that claimant Nos.1 to 3 are the wife, minor son and mother of the deceased respectively, whereas, claimant No.4, Partap Singh, is the father of the deceased. It is a settled principle that barring exceptional circumstances, the father cannot be considered as dependant upon his son. Therefore, learned Tribunal erred in applying the deduction of ¼th by taking the number of dependants as four. In this view of the matter, the dependents being three in number, the deduction is increased from 1/4th to 1/3rd. It has come on record that the deceased was 30 years of age at the time of his death in the accident. Accordingly, keeping in view the law laid down in ***Rajesh and others Vs.Rajbir Singh and others, (2013) 9 SCC 54***, an increase of 50% is ordered towards the future prospects of the deceased. The income, multiplier and deduction have been rightly determined by the learned Tribunal, therefore, no inference is called for, to this effect.

In this way, the compensation on account of loss of dependency would come to Rs.5100/- + 50% X 12 X 2/3 X 17 = Rs.10,40,400/-, as against the amount of Rs.7,80,300/-, assessed by the learned Tribunal.

It is further observed that the learned Tribunal has awarded an amount of Rs.15,000/- towards funeral expenses., which being inadequate, is enhanced to Rs.25,000/-. Another amount of Rs.1,00,000/- is awarded to the minor child of the deceased, on account of loss of love and affection.

In view of the above, the claimant-appellants are held entitled to the enhanced compensation of Rs.3,70,100/- (Rs.2,60,100/- (enhancement on account of loss of dependency) + Rs.10,000/- (enhancement towards funeral expenses) +

Rs.1,00,000/- (loss of love and affection, payable to the minor child of the deceased)], 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, it shall also carry interest @ 7.5% per annum, from the date of filing the present appeal, till its realization.

However, as the question of grant of future prospects to daily wagers/self employed persons is pending adjudication before the Hon'ble Supreme Court in SLP No.16735 of 2014, the amount of compensation under the head 'future prospects', shall be disbursed to the claimants against adequate surety in the form of indemnity bonds.

As a consequence of the above discussion, FAO Nos.1498 and 3272 of 2015, are hereby partly allowed and the impugned award is modified to the extent indicated above.

The statutory amount of Rs.25,000/-, deposited by the appellant-Insurance Company be placed at the disposal of the Tribunal for disbursement.

10.05.2016 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Note : Whether to be referred to Reporter : Yes / No.