IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.3734 of 2013 (O&M)
Date of decision : 24.05.2016

Smt. Begha and others

......Appellants

Versus

Bishan Singh 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. Manish Soni, Advocate for appellants.
Mr. Amit Kumar Goyal, Advocate for respondent No.3.

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DARSHAN SINGH, J.

CM-15116-CII-2013

There is delay of 74 days in filing the present appeal. The appellants have filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 74 days in filing the present appeal is hereby condoned.

Main Appeal

The present appeal has been preferred by the appellants-claimants against the award dated 26.11.2012 passed by the learned Motor Accidents Claims Tribunal, Rewari (hereinafter called the 'Tribunal') vide which the appellants-claimants have been awarded a sum of Rs.4,73,772/- as compensation on account of death of Prem Kumar on 02.05.2011 as a result of injuries suffered by him in the motor vehicular accident, which took place on 01.05.2011.

2. The present appeal has been preferred by the appellants-claimants for enhancement of amount of compensation.

3. Learned counsel appearing for the appellants-claimants contended that the deceased was a young man of 22 years of age. The learned Tribunal has not added any amount towards the future prospects to the income of the deceased. He further contended that there were three dependents of the deceased. The learned Tribunal has wrongly deducted 50% of the income of the deceased towards his personal and living expenses instead of 1/3rd. He further contended that less amount has been awarded towards funeral expenses. Thus, he contended that the learned Tribunal has not awarded the just compensation.

4. On the other hand, Mr. Amit Kumar Goyal, Advocate learned counsel appearing for respondent No.3-Insurance Company contended that the deceased was only a casual worker and no future prospects could have added to his income. The compensation has been adequately awarded under the other conventional heads. Thus, he contended that there is no scope of any further enhancement in the amount of compensation.

5. I have duly considered the aforesaid contentions.

6. As per the case of the claimants, the deceased was a mechanic. However, no documentary evidence was produced by the claimants to prove that the deceased was a mechanic. The learned Tribunal has taken the deceased to be a unskilled labourer and determined his income to be Rs.4200/- per month. There is no denial to the fact that the deceased was a young man of 22 years of age. Even if he would have been working as a casual labourer, there were very bright prospects of the increase in his income with the passage of time. So, the future prospects as per the age of the deceased should have been added to his income. In case ***National Insurance Company Ltd. Vs. Pushpa and others*** (supra), relied upon by learned counsel for respondent-Insurance Company the matter has been referred to the larger Bench keeping in view the conflicting judgments but in a latest 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***, and 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: "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 selfemployed 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 selfemployed 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." The deceased being of the age of 30 years, 50% is the required addition."*

7. Thus, in view of the age of the deceased, 50% of the income of the deceased is required to be added to his income towards future prospects, which comes to Rs.6300/- per month i.e. Rs.75,600/- per annum.

8. All the claimants were dependent on the income of the deceased, as appellant-claimant No.1 Smt. Begha is the widowed grand-mother of the deceased. Appellants-claimants No.2 & 3 are the minor brother and sister, respectively of the deceased. Their parents have already died. So, they were fully dependent on the income of the deceased. So, 1/3rd of the income of the deceased shall be deducted towards his personal and living expenses and the remainder comes to Rs.50,400/- (75,600 - 25,200). The learned Tribunal has rightly applied the multiplier of 18 as per the age of the deceased. So, the loss of dependency comes to Rs.9,07,200/-.

9. The learned Tribunal has awarded only Rs.5000/- towards funeral expenses, which are required to be enhanced to Rs.25,000/-. Learned Tribunal has rightly awarded sum of Rs.10,172/- towards medical expenses and Rs.5000/- towards loss to estate. In this way the total amount of compensation comes to Rs.9,47,372/- (9,07,200 + 25,000 + 10,172 + 5000).

10. Thus, keeping in view my aforesaid discussion, the present

appeal is hereby partly allowed. The amount of compensation payable to appellants-claimants is enhanced to Rs.9,47,372/- from Rs.4,73,772/- as awarded by the Tribunal. The appellants-claimants shall be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

24.05.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**