**IN THE HIGH COURT OF PUNJAB & HARYANA**
**AT CHANDIGARH**

**FAO No.2316 of 2014 (O&M)**
**Date of decision : 26.02.2016**

**Smt. Pinki and others**

......Appellants

*Versus*

**Joginder 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. Harish Nain, Advocate for appellants.

Respondent No.1 ex parte.

Mr. Pardeep Goyal, Advocate for respondent No.2.

Mr. Suresh Kumar Kaushik, Advocate for respondents No.3 & 4.

Mr. M.B. Jain, Advocate for respondent No.5.

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**DARSHAN SINGH, J.**

CM-8316-CII-2014

There is delay of 47 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 in filing the present appeal stands condoned.

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2. The present appeal has been preferred by the appellants-claimants against the award dated 16.09.2013 passed by the learned Motor Accidents Claims Tribunal, Jind (hereinafter called the 'Tribunal') vide which they have been awarded compensation to the tune of Rs.9,14,000/- along with interest @ 9% per annum on account of death of Samsudin in the motor vehicular accident which took place on 07.08.2012.

3. The present appeal has been preferred only for enhancement of the amount of compensation.

4. Learned counsel for the appellant-claimants contended that the learned Tribunal has not added the future prospects to the income of the deceased. The deceased was only 26 years of age at the time of death. So, 50% of the income of the deceased should have been added to the future prospects. He further contended that no amount has been awarded by the learned Tribunal towards loss of love and affection to the minor child and mother. Less amount has been awarded on account of loss of consortium to the widow appellant-claimant No.1. Thus he contended that the compensation has not been computed by the Tribunal in accordance with law.

5. On the other hand, Mr. Pardeep Goyal, Advocate , learned counsel for respondent No.2 contended that the deceased was not holding

any permanent job, so no future prospects were required to be added. The learned Tribunal has taken the income of the deceased only as a casual labourer. He further contended that the accident has taken place in the year 2012 and at that time the income of the casual labourer was not more than 4000/- per month, but the learned Tribunal has wrongly taken the income of the deceased to be Rs.6000/- per month. He further contended that the appropriate amount of compensation has been awarded under the other heads.

6. I have duly considered the aforesaid contentions.

7. Order 41 Rule 33 of Code of Civil Procedure, 1908 provides that the Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made as the case may require.

8. In the instant case, the learned Tribunal has considered the deceased to be a casual labourer, but the income of the deceased has been taken to be Rs.6000/- per month, which is certainly on the higher side, as in the year 2012 the income of the casual labourer cannot be taken to be more than 5000/- per month. So, the income of the deceased shall be taken to be Rs.5000/- per month i.e. Rs. 60,000/- per annum.

9. I do not find any substance in the plea raised by learned counsel for respondent No.2 Insurance Company that no future prospects could have been added to the income of the deceased as he was not holding any permanent job because it is a fact of common knowledge that even the income of the casual labourer increases with the passage of time and that is why the Government revises the minimum wages of even the

casual labourers. So, certainly the future prospects should have been added to the income of the deceased. In the 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***, 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 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."*
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> *The deceased being of the age of 30 years, 50% is the required addition."*

10. The deceased was 26 years of age at the time of his death. So, 50% of the income of the deceased was required to be added to

the actual income of the deceased. Thus, after adding the future prospects, the total income of the deceased comes to Rs.90,000/- per annum. 1/3rd of his income shall be deducted towards his personal and living expenses. The remainder comes to Rs.60,000/-. The deceased was 26 years of age at the time of his death. As per the law laid down by the Hon'ble Apex Court in case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009) 6 SCC 121***, the multiplier of 17 shall be applicable. The multiplicand comes to Rs.10,20,000/- (60000 x 17) instead of Rs.8,64,000/- as determined by the learned Tribunal. The learned Tribunal has awarded only Rs.20,000/- to appellant claimant No.1 Smt. Pinki the widow of deceased Samsudin for loss of consortium. She will be entitled to a sum of Rs.1,00,000/- towards loss of consortium. The learned Tribunal has not awarded any amount on account of loss of love, care and guidance to appellant-claimant No.2 Khushi, the minor daughter of deceased. She will be entitled to a sum of Rs.1,00,000/- under this head. Smt. Bala mother of deceased shall also be entitled to a sum of Rs.50,000/- on account of love and affection of her son. The learned Tribunal has awarded Rs.5000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The total amount of compensation comes to Rs.13,00,000/- (10,20,000 + 1,00,000 + 1,00,000 + 50,000 + 5000+ 25,000).

11. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.13,00,000/- from Rs.9,14,000/- as awarded by the learned Tribunal. The claimant shall be entitled to interest on the enhanced

amount from the date of filing the petition till realisation on the rate as awarded by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

**26.02.2016** **( DARSHAN SINGH )**
*sunil yadav* **JUDGE**