

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

FAO No.4661 of 2013 (O&M)

Date of decision : 05.12.2016

Smt. Renu and others

.....Appellants

Versus

Kulbir Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Yogesh Saini, Advocate for
Mr. Manoj Bajaj, Advocate for appellant.

Ms. Rohini, Advocate for
Mr. Vishal Goel, Advocate for respondent No.3.

DARSHAN SINGH, J.

CM-19707-CII-2013

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 05 days in filing the present appeal is hereby condoned.

Main appeal

The present appeal has been preferred against the award dated 01.04.2011, passed by the learned Motor Accidents Claims Tribunal, Sonipat (hereinafter called the “Tribunal”) in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”), whereby the appellants-claimants have been awarded compensation to the tune of

₹5,06,000/- as compensation on account of death of Anil Kumar in the motor vehicular accident which took place on 12.10.2009.

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

3. I have heard learned counsel for the parties and gone through the record of the case meticulously.

4. Learned counsel for the appellants-claimants contended that the learned Tribunal has wrongly determined the income of the deceased to be ₹3600/- per month. He contended that in fact the deceased was working as a building material supplier and was running the shop under the name and style of M/s Pooja Cement Store, Sampla Road, Kharkhoda. He also dealt in properties and his monthly income was ₹30,000/-.

5. He further contended that the learned Tribunal has not awarded any future prospects to the income of the deceased. Less amount has been awarded under the conventional heads. No amount has been awarded to the children and mother of the deceased on account of loss of love and affection. Thus, he contended that just compensation has not been awarded by the learned Tribunal to the appellants-claimants.

6. On the other hand, learned counsel for respondent-Insurance Company contended that there was no evidence to establish that the deceased was doing the business of a building material supplier and the property dealer. No documentary evidence except the oral statement of the widow of the deceased was produced. Thus, he contended that the learned

Tribunal has rightly taken the income of the deceased to be ₹3600/- per month.

7. He further contended that as the deceased was not having any permanent regular job, so the appellants-claimants were not entitled for addition of any future prospects towards the income of the deceased. He further contended that the appropriate amount has been awarded under all conventional heads. Thus, he contended that there is no scope for enhancement of the amount of compensation.

8. I have duly considered the aforesaid contentions.

9. No doubt, as per the case of the claimants deceased Anil Kumar was alleged to be working as a building material supplier under the name and style of M/s Pooja Cement Store, Sampla Road, Kharkoda and was also dealing in the properties. It is alleged that he was earning ₹30,000/- per month from both the avocations. Appellant-claimant Smt.Renu the widow of deceased has further improved the version and has deposed that the deceased was earning ₹35,000/- per month. But it is an admitted fact that the claimants have not placed on file any documentary evidence in the shape of income tax returns, licence of property dealing, sales tax number *etc.* to show that the deceased was a building material supplier and property dealer. In the absence thereof, the income of the deceased was certainly to be taken into consideration as unskilled labourer. The learned Tribunal has taken the income of the deceased to be ₹3600/- per month. This accident has taken place on 12.10.2009. As per the

notification issued by the Labour Department, Haryana the minimum wages of unskilled workers in the State of Haryana were ₹3914/- per month with effect from 01.07.2009. So, the income of the deceased shall be taken to be ₹3900/- per month *i.e.* ₹46,800/- per annum.

10. Learned Tribunal has not awarded any future prospects towards the income of the deceased. The deceased was a hale and hearty person. His income was bound to increase with the passage of time as it is a fact of common knowledge that the income of nobody remains stagnant for whole of the life and that is why even the minimum wages are revised periodically by the government. So, the future prospects were required to be added to the income of the deceased. As per the averments in the petition and the postmortem report Ex.P5, the deceased was 40 years of age. As per the law laid down by the Hon'ble Apex Court in cases ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009) 6 SCC 121*** and ***Rajesh & others Vs. Rajbir Singh & others, 2013(3) RCR (Civil) 170***, where the deceased is below 40 years of age, the addition of future prospects will be 50% to the actual income of the deceased and where the deceased falls in the age group of 40 to 50 it will be 30%. In the instant case the appellants-claimants have not led any evidence to show that the deceased was below 40 years of age at the time of the death. So, he falls in the age group of 40 to 50. 30% of the income of the deceased shall be added towards his actual income. Thus, the total income comes to ₹60,840/-. In view of the dependent family members, 1/4th of the income of the deceased

shall be deducted towards his personal and living expenses. The remainder comes to ₹45,630/-. The learned Tribunal has rightly applied the multiplier of 15, so the loss of dependency comes to ₹6,84,450/-.

11. Learned Tribunal has awarded only ₹10,000/- towards loss of consortium to appellant-claimant No.1. Appellant-claimant No.1 Smt.Renu shall be entitled to a sum of Rs.1,00,000/- on account of loss of consortium. Learned Tribunal has not awarded any amount to appellants-claimants No.2 and 3 the children of the deceased towards loss of love, care and guidance of their father. They shall be entitled to a sum of ₹1,00,000/- under this head. Learned Tribunal has also not awarded anything to the mother of deceased towards loss of love and affection of her son. Claimant Smt.Krishnawati, the mother of the deceased, shall also be entitled to a sum of ₹1,00,000/- towards loss of love and affection of her son. Learned Tribunal has only awarded a sum of ₹5000/- towards last rites and funeral expenses, which is enhanced to ₹25,000/-. Learned Tribunal has rightly awarded sum of ₹5000/- towards loss to estate. Thus, the total amount of compensation payable to the appellants-claimants comes to ₹10,14,450/-.

12. 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 ₹10,14,450/- from ₹5,06,000/- as awarded by the Tribunal. The appellants-claimants shall also be entitled to interest on the enhanced amount of compensation at the rate as awarded by the learned Tribunal from the date of filing the claim petition till realisation. The liability to pay the enhanced amount and the apportionment amongst

the claimants shall remain same as determined by the learned Tribunal in the main award.

13. 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.

05.12.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No