IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.4057 of 2014

Date of decision : 08.12.2016

Smt. Rita and others

......Appellants

Versus

Mohinder Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sanjeev Patial, Advocate for appellants.

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate for respondent No.3-
Insurance Company.

****

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 09.10.2013 passed by learned Motor Accidents Claims Tribunal, Karnal (hereinafter called the "Tribunal") in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short the "Act") vide which the appellants-claimants have been awarded compensation to the tune of ₹6,27,500/- on account of death of Shamsher Singh in the motor vehicular accident which took place on 31.07.2011.

2. The present appeal has been preferred by the appellants-claimants for 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 learned Tribunal has taken the income of the deceased to be only ₹4500/- per month, though he was an agriculturist and was having large chunk of agricultural land. He further contended that no future prospects have been added to the income of the deceased. Very less amount has been awarded towards the loss of consortium and funeral and last rites expenses. No amount has been awarded on account of loss of love and affection to the minor children of the deceased and his mother. Thus, he contended that the learned Tribunal has not awarded the just amount of compensation to the claimants.

5. On the other hand, learned counsel appearing for the respondent-Insurance Company contended that it was not proved that the deceased was an agriculturist, so the income of the deceased determined by the learned Tribunal is just and appropriate. He further contended that no future prospects were required to be added as the deceased was neither self-employed nor having any permanent job carrying regular increments. He further contended that the learned Tribunal has taken into consideration all the heads while awarding the compensation, so no further enhancement in the amount of compensation is permissible.

6. I have duly considered the aforesaid contentions.

7. As per the case of the appellants-claimants, the deceased was an agriculturist and was also running a milk diary and was earning ₹30,000/- per month. The appellants-claimants have brought on record the

copy of *Jamabandi* for the year 2006-07 Ex.P4, wherein Puran Singh the father of deceased Shamsher Singh has been recorded to be one of the co-sharer and after his death, vide mutation Ex.P5, the estate of Puran Singh was inherited by deceased Shamsher Singh and other legal heirs. However, the claimants have not placed on record any documentary evidence to show that deceased was doing the business of milk dairy. They have not produced any account book/note book to show the sale of milk by him. It is a matter of common knowledge that generally the milk vendors realize the payment of the milk sold by them at the end of the month. So, certainly they have to maintain some account to ascertain the quantity of milk supplied by them to their customers, but no such record has been produced in this case. So, it is not proved that the deceased was doing any business of milk dairy.

8. The agricultural land which was standing in the name of deceased has been inherited by the appellants-claimants and they are getting the income of the said agricultural land. As per the settled law, in case of death of an agriculturist, the value of his managerial capacity and personal contribution for the cultivation of the land has to be taken into consideration. So, the learned Tribunal has rightly taken the income of the deceased to be ₹4500/- per month. However, the learned Tribunal has not awarded any future prospects to the income of the deceased. The deceased was a young person of 36 years of age. So, there was bright prospects of the appreciation in the income of the deceased. Thus, in view of 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 ₹6750/- per

month *i.e.* ₹81,000/- per annum. 1/4th of the income of the deceased is to be deducted towards his personal and living expenses. The remainder comes to ₹60,750/-. In view of the age of the deceased, the multiplier of 15 shall be applicable. The loss of dependency comes to ₹9,11,250/-.

9. Learned Tribunal has only awarded ₹5000/- towards transportation charges, ₹5000/- towards last rites expenses and ₹5000/- towards loss of consortium. These amounts are highly inadequate. As per the ratio of law laid down by Hon'ble Apex court in case ***Rajesh & others Vs. Rajbir Singh & others, 2013(3) RCR (Civil) 170***, appellant-claimant Smt. Reeta the widow of decease Shamsher Singh shall be entitled to ₹1,00,000/- as loss of consortium. All the four minor children of deceased Shamsher Singh will be entitled to ₹2,00,000/- on account of loss of love, care and guidance of their father. Smt. Bimla the mother of the deceased shall also be entitled to ₹1,00,000/- on account of loss of love and affection of her son. The claimants will also be entitled to ₹25,000/- towards loss of funeral and last rites expenses. Total amount of compensation payable to the appellants-claimants comes to ₹13,36,250/-

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The total amount of compensation payable to appellants-claimants is enhanced to ₹13,36,250/- from ₹6,27,500/- 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 of compensation and apportionment amongst the

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

11. 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.

08.12.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking / reasoned : Yes / No

Whether reportable : Yes / No