

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

FAO No.2720 of 2015 (O&M)

Date of decision : 07.12.2016

Kamlesh and others

.....Appellants

Versus

Rakesh Kumar and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. A. K. Yadav, Advocate for appellants.

Ms. Sheenu Sura, Advocate for respondent No.2-
Insurance Company.

DARSHAN SINGH, J.

CM-8380-CII-2015

Heard. In view of the reasons mentioned in the application,
same is allowed and the delay of 139 days in filing the present appeal is
hereby condoned.

FAO-2720-2015

Notice of motion to respondent No.2-Insurance Company only.

Notice has been accepted by Ms. Sheenu Sura, Advocate on
behalf of respondent No.2.

So, service is complete.

Learned counsel for both the parties stated that they are ready
to address the arguments for the disposal of the appeal.

The present appeal has been preferred against the award dated 05.04.2014, passed by learned Motor Accidents Claims Tribunal, Rewari (hereinafter called the “Tribunal”) whereby the claim petition filed by the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”) for grant of compensation on account of death of Birender Singh due to the injuries suffered by him on account of motor vehicular accident which took place on 23.01.2012, has been partly allowed and they have been awarded compensation to the tune of ₹08,50,000/-.

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

3. I have heard learned counsel for both the parties and have gone through the paper-book carefully.

4. Learned counsel for the appellants-claimants contended that the deceased was a young man of 35 years of age. He was employed as a mechanic at Ashok Motor Workshop, Kosli and was earning ₹10,000/- per month. He contended that learned Tribunal has not awarded any future prospects towards the income of the deceased. No amount of compensation has been awarded on account of loss of love and affection to the children and the mother of the deceased. Thus, the just amount of compensation has not been awarded.

5. On the other hand, learned counsel for respondent-Insurance Company contended that the deceased was not having any permanent job carrying regular increments. So, the learned Tribunal has rightly not

awarded the future prospects towards the income of the deceased. She further contended that the learned Tribunal has awarded the proper compensation under all the heads. Thus, the compensation awarded by the learned Tribunal to the appellants is just and appropriate.

6. I have duly considered the aforesaid contentions.

7. As per the case of the appellants-claimants, the deceased was a motor mechanic. He was employed with Ashok Motor Workshop, Kosli and was earning ₹10,000/- per month, but in the absence of any such evidence, the learned Tribunal has treated the deceased to be a labourer and has determined his income to be ₹5000/- per month. No fault can be found with this conclusion of the learned Tribunal. But the learned Tribunal has not added any future prospects towards the income of the deceased. This fact is not disputed that the deceased was a young man of 35 years of age. He was hale and hearty. 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 the deceased was below 40 years of age at the time of his accidental death, so 50% of his income is required to be added to his income towards future prospects. Thus, the total income comes to ₹7500/- i.e. ₹90,000/- per annum. Keeping in view the number of dependent family members, 1/4th of the income of the deceased shall be deducted towards his personal and living expenses. The

remainder comes to ₹67,500/-. In view of the age of the deceased the multiplier of 16 shall be applicable. Thus, the loss of dependency comes to ₹10,80,000/-.

8. The learned Tribunal has rightly awarded a sum of ₹1,00,000/- towards loss of consortium to appellant-claimant No.1 Kamlesh the widow of deceased Birender Singh, ₹25,000/- towards funeral expenses and ₹5000/- towards loss to estate. But the learned Tribunal has not awarded any compensation to the children and mother of the deceased towards loss of love and affection. Appellant-claimants No.2 to 5, the minor children of the deceased, shall be entitled to ₹2,00,000/- towards loss of love, care and guidance of their father. Smt. Dhanpati alias Dhanno, the mother of the deceased, shall also be entitled to ₹1,00,000/- towards loss of love and affection of her son. In this manner, the total amount of compensation comes to ₹15,10,000/-.

9. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to the appellants-claimants is enhanced to ₹15,10,000/- from ₹8,50,000/- as awarded by the Tribunal. The appellants-claimants shall be entitled to interest on the enhanced amount of maintenance at the rate as determined by the learned Tribunal, from the date of filing the claim petition till realisation. The liability to pay the enhanced amount of compensation and the apportionment amongst the claimants shall remain same as determined by the learned Tribunal in the main award.

10. 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 No.3-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.

07.12.2016*sunil yadav***(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No