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

FAO No.4566 of 2014(O&M)

Date of decision:24.8.2016

Vidhya Devi and others ….Petitioners

VERSUS

Satender and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Aditya Yadav, Advocate for
Mr. S.N. Yadav, Advocate for the petitioners.

Mr. S.S. Sidhu, Advocate for respondent No.1.

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REKHA MITTAL, J.

The claimants are in appeal seeking enhancement of compensation in respect of death of Dayanand in a motor vehicular accident that occurred on 18.10.2011.

The learned Tribunal assessed loss of income (pension) to the extent of Rs.9428/-, deducted 1/3rd towards personal expenses, adopted a multiplier of 13 and computed loss of dependency to the tune of Rs.75,420/- per annum. In addition, an amount of Rs.10,000/- each was awarded for loss of consortium and expenses on funeral and last rites, making total compensation to the tune of Rs.10,00,460/-.

Counsel for the appellants would contend that besides loss of pension taken into consideration by the Tribunal, the claimants also suffered loss of income, the deceased was deriving by working as a supervisor with M/s M&D Enterprises at Rs.15,600/- per month, which was not granted by the Tribunal. It is further argued that benefit of future prospects to the extent of 15% is also liable to be extended on income of the deceased. Compensation awarded under conventional heads needs re-look and enhancement.

Counsel for the insurance company has submitted that evidence adduced by the claimants with regard to employment of the deceased with M/s M&D Enterprises is not cogent and convincing, therefore, the learned trial Court has rightly brushed aside plea of the claimants that the deceased was either working with the aforesaid company or was earning Rs.15,600/- per month. It is further argued that the deceased was an ex-serviceman, more than 50 years of age at the time of occurrence.

I have heard counsel for the parties, perused the paper-book particularly the award passed by the learned Tribunal.

Counsel for the parties have not disputed that the deceased was getting pension of Rs.12978/-. In response to a query raised on the previous date, counsel for the appellants has informed that after death of Dayanand, a sum of Rs.3550/- is being paid as pension to widow of the deceased. Taking into consideration the amount of pension paid to the deceased and the amount now available to widow of the deceased, the claimants shall be entitled to an amount of Rs.9500/- as loss of pension and 1/3rd is deducted towards personal expenses.

The claimants have pleaded that the deceased was working as a Supervisor with M/s M&D Enterprises at a salary of Rs.15,600/- per month. A representative from the said concern was examined as PW-3. He has produced on record a computer generated salary statement (Ex.PW3/A) for the period July 2011 to October, 2011. In his cross examination, he has deposed that the company is maintaining the attendance record and he had not brought any attendance register of the employees working in the said concern. No documentary evidence has been produced to prove that any payment from the aforesaid company was ever remitted to the deceased by way of documentary evidence. In absence of any supporting document to prove authenticity of Ex.PW3/B, the learned Tribunal has rightly refused to rely upon evidence of Surender Kumar (PW-3) to corroborate version of the claimants that the deceased was working with M/s M&D Enterprises at a salary of Rs.15,600/- per month. At the same time, there is nothing on record suggestive of the fact that the deceased was suffering from any ailment rendering him unable to work and create a source of earning at the age of 50 years particularly in the circumstances that he was discharged from Armed Forces. Taking into consideration the minimum wage available to different categories of workers, this Court assesses monthly income of the deceased to the tune of Rs.4800/- per month. As the deceased was more than 50 years of age, the claimants shall be entitled to benefit of future prospects to the extent of 15%. In this manner, loss of dependency is calculated as follows:-

Loss of pension = Rs.9,88,000/-	(Rs.9500/- x 12 x 13) – Rs.4,94,000/- (1/3rd deduction)
Loss of income = Rs.5,74,080/-	[Rs.748800/- (Rs.4800/- x 12 x 13) + 1,12,320/- (15% future prospects) – 2,87,040/- (1/3rd deduction).

The appellants are entitled to an amount of Rs.25,000/- each for expenses on funeral and loss of estate, Rs.1,00,000/- for loss of consortium to the widow, a sum of Rs.50,000/- for loss of love and affection to mother of the deceased.

In view of the above, compensation payable to the appellants comes to Rs.17,62,080/- and enhanced compensation is Rs.7,61,620/- (Rs.17,62,080/- - Rs.10,00,460/-). Out of enhanced compensation Rs.50,000/- shall be payable to the mother and remaining enhanced compensation shall be paid to widow of the deceased**.** The enhanced compensation payable to the widow shall be deposited in a Fixed Deposit Receipt for a period of three years.

Disposed of accordingly.

AUGUST 24, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no