IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(1) **FAO No.530 of 2013 (O&M)**

Date of decision : 09.12.2016

United India Insurance Company Ltd.

......Appellant

Versus

Santosh Kumari and others

...Respondents

(2) **FAO No.2542 of 2013 (O&M)**

Date of decision : 09.12.2016

Santosh Kumari and others

......Appellants

Versus

Virender Singh @ Vicky and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. Rajesh K. Sharma, Advocate for appellant in FAO No.530 of 2013 and for respondent No.3 in FAO No.2542 of 2013.

Mr. Jagjit Singh Chatrath, Advocate for appellants in FAO No.2542 of 2013 and for respondents No.1 to 5 in FAO No.530 of 2013.

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DARSHAN SINGH, J.

CM-11808-CII-2013 in
FAO-2542-2013

For the reasons mentioned in the application, same is allowed and the delay of 60 days in re-filing the appeal is hereby condoned.

Main Appeals

This judgment shall dispose of both the appeals captioned above, which have been arisen out of the same award dated 11.10.2012 passed by the learned Motor Accidents Claims Tribunal, Yamunanagar at Jagadhari (hereinafter called the "Tribunal"), whereby the claim petition filed by the appellants-claimants of FAO No.2542 of 2013 under Section 166 of the Motor Vehicles Act, 1988 (for short the "Act") for grant of compensation on account of death of Narata Ram in the motor vehicular accident which took place on 18.11.2011 has been partly allowed and they have been awarded compensation to the tune of ₹35,64,850/- along with the interest at the rate of 7.5% per annum from the date of filing the claim petition till realization.

2. FAO No.530 of 2013 has been filed by United India Insurance Company, insurer of the Ford Icon Car bearing registration No.HR-02S-0061 to assail the award, while FAO No.5242 of 2013 has been preferred by the appellants-claimants for enhancement of the amount of compensation.

3. I have heard heard learned counsel for the parties and

gone through the record of the case meticulously.

4. Initiating the arguments, learned counsel for the Insurance Company contended that the learned Tribunal has awarded the exorbitant amount of compensation to the claimants. He contended that claimant Smt. Santosh Kumari, widow of the deceased, was herself a government employee. She is also getting family pension after death of Narata Ram. So, the dependency should not have been taken more than 2/3rd of the income of the deceased. He further contended that learned Tribunal has deducted less amount towards income tax. The income of the deceased was taxable. The amount should have been deducted towards income tax at the rate of 10%. Thus, he contended that the excess amount of compensation has been awarded.

5. On the hand, learned counsel for the claimants contended that the deceased was also getting the regular bonus which was also the part of the salary but the same has not been taken into consideration by the learned Tribunal. The bonus should have been added to the income of the deceased. He further contended that less amount has been awarded towards other conventional heads. Thus, he contended that the amount of compensation awarded by the learned Tribunal is inadequate.

6. I have duly consideration the aforesaid contentions.

7. The claimants have filed the claim petition under Section 166 of the Act for grant of compensation on account of death of Narata Ram. He was working as a Technician/Machinist Grade III in Northern

Railways and was posted in Railway Workshop, Jagadhari. The claimants have examined Suman Sharma, Office Superintendent Railway Workshop Jagadhari as PW-1. This witness has proved the attested copy of the salary slip of the deceased as Ex.P2 and bonus slip as Ex.P3, which show that the gross salary of the deceased was ₹26,636/- in the month of October, 2011. Out of that amount, ₹2469/- were the arrears. After deducting this amount, the monthly salary of deceased comes to ₹24,167/-. The learned Tribunal has rightly added 30% of the income of the deceased towards future prospects as the deceased was below 50 years of age at the time of the accident and he was having a permanent job with the Northern Railways. After adding the future prospects of 30% *i.e.* ₹7250/-, the actual salary of the deceased comes to ₹31,417. To make it a round figure, we can take it as ₹31,400/-. The annual income of the deceased comes to ₹3,76,800/-. The deceased was also getting ₹8970/- as annual bonus as per the bonus slip Ex.P3. Thus, the total annual income of the deceased comes to ₹3,85,770/-.

8. I found substance in the contentions raised by learned counsel for the Insurance Company that learned Tribunal has not deducted the just amount towards income tax. The learned Tribunal has only deducted ₹9400/- towards income tax. The annual income of the deceased comes to ₹3,85,770/-. As per the income tax slab/rate for the financial year 2011-12 (assessment year 2012-13), there was no tax on the income up to ₹1,80,000/-. The income exceeding ₹1,80,000/- upto

₹5,00,000/- was taxable at the rate of 10%. After deducting the tax free income *i.e.* ₹1,80,000/-, the remaining income of the deceased comes to ₹2,05,770/-. So, 10% of ₹2,05,770/- shall be deducted towards income tax, which comes to ₹20,577/-. So, the remaining income of the deceased comes to ₹3,65,193/-.

9. The deceased had five dependents. The fact that Santosh Kumari, the widow of the deceased was herself a working woman and after the death of her husband she has been getting the family pension is no ground to say that she was not dependent upon the income of her husband. Moreover, there are four other dependents except the widow on the income of the deceased. So, the learned Tribunal has rightly deducted $1/4^{th}$ of the income of the deceased towards his personal and living expenses. The remainder comes to ₹2,73,894.75. As the deceased was in the age group of 46 to 50, the multiplier of 13 shall be applicable. Thus, the loss of dependency comes to ₹35,60,631.75. To make it a round figure, we can take it as ₹35,60,630/-.

10. I found substance in the contentions raised by learned counsel for the claimants that the learned Tribunal has granted inadequate compensation towards the conventional heads. Smt. Santosh Kumari, widow of the deceased has been awarded only ₹5000/- on account of loss of consortium. The claimants have been awarded only ₹5000/- towards funeral and last rites expenses. As per the law laid down in ***Rajesh & others Vs. Rajbir Singh & others, 2013(3) RCR (Civil) 170***, appellant-

claimant Santosh Kumari shall be entitled to a sum of ₹1,00,000/- towards loss of consortium. The deceased had three children. They will also be entitled to ₹1,00,000/- towards loss of love, care and guidance of their father. Smt. Parshani Devi, 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 shall also be entitled to ₹25,000/- towards funeral and last rites expenses. In this way, the total amount of compensation comes to ₹38,85,630/-.

11. Thus, keeping in view my aforesaid discussion, FAO No.530 of 2013 filed by appellant-Insurance Company has no merits and the same is hereby dismissed. FAO No.2542 of 2013 filed by the appellants-claimants is hereby partly allowed. The amount of compensation payable to the appellants-claimants is enhanced to ₹38,85,630/- from ₹35,64,850/- as awarded by the Tribunal. The appellants-claimants shall also be entitled to interest on the enhanced amount of compensation at the rate as determined by the learned Tribunal from the date of filing the 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.

09.12.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No