IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.5197 of 2015 (O&M)

Date of decision : 27.08.2016

Smt. Zaida and another

......Appellants

Versus

Sahun and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vishal Mittal, Advocate for appellants.

Mr. Munfaid Khan, Advocate for respondents No.1 & 2.

Mr. Suvir Dewan, Advocate for respondent No.3.

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<u>DARSHAN SINGH, J.</u>

<u>CM-16026-CII-2015</u>

There is delay of 122 days in filing the present appeal. The appellant has filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 122 days in filing the present appeal is hereby condoned.

<u>FAO-5197-2015</u>

The present appeal has been preferred against the award dated 10.11.2014 passed by the learned Motor Accidents Claims Tribunal, Mewat (hereinafter called the "Tribunal") vide which the appellants-claimants No.1 & 2 have been awarded compensation to the tune of ₹ 5,96,000/- along with interest at the rate of 9 % per annum on account of the death of Mubarik in the motor vehicular accident which took place on 31.05.2013.

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

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

4. Learned counsel for the appellants contended that deceased Mubarik was only 25 years of age at the time of his death. He was a milk vendor and was earning ₹20,000/- per month. The learned Tribunal has wrongly taken his income to be ₹4000/- per month. The learned Tribunal has also not awarded the future prospects towards the income of the deceased. Less amount has been awarded towards other conventional heads. Thus, he contended that the learned Tribunal has not awarded the just compensation.

5. On the other hand, Mr. Suvir Dewan, Advocate, learned counsel for the respondent-Insurance Company contended that there was no documentary evidence to establish the profession and income of the deceased. So, the learned Tribunal has rightly determined the income of the deceased to be ₹4000/- per month. He further contended that appropriate amount of compensation has been awarded under other heads and there is no scope for further enhancement of the amount of compensation.

6. I have duly considered the aforesaid contentions.

7. As per the case of the appellants-claimants, deceased Mubarik was working as a milk vendor and was earning ₹20,000/- per month but except the oral statement of PW1 Smt. Zaida the widow of Mubarik there is no other corroborative evidence to establish the income of the deceased. If deceased would have been selling the milk at such a large scale, he must have maintain some accounts as it is a fact of common knowledge that the milk is generally sold on credit and the amount thereof is realized at the end of the month. So, the milk vendor has to maintain the account in order to realize the money from his customers at the end of the month but no such document has been brought on record by the appellants-claimants. So, there is no infirmity of the income determined by the learned Tribunal at the rate of ₹4000/- per month i.e. ₹48,000/- per annum.

8. The learned Tribunal has not added any amount to his income towards future prospects. Deceased Mubarik was a young energetic person of 25 years of age. He was hale and hearty. So, certainly his income was bound to increase with the passage of time. In view of the age of the deceased as he was much below 40 years of age. 50% of the income of the deceased should have been added towards the future prospects. Thus, the total annual income of the deceased comes to ₹72,000/-. The claim petition has been preferred by the widow, minor daughter and brother of the deceased. Certainly claimant No.3 Sahabu, the elder brother of the deceased was not dependent upon his income. So, the deceased had two dependents. 1/3rd of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to ₹48,000/- per annum. The

multiplier of 18 shall be applicable as the deceased was only 25 years of age. So the loss of dependency comes to ₹8,64,000/-. In addition to the aforesaid amount, appellant-claimant Smt. Zaida, the widow of the deceased shall be entitled to a sum of ₹1,00,000/- towards loss of consortium. Appellant-claimant No.2 Kafreena, the minor daughter of the deceased shall also be entitled to ₹1,00,000/- towards loss of love, care and guidance. The appellants-claimants shall also be entitled to ₹25,000/- towards transportation, burial and last rite expenses. The total amount of compensation payable to the appellants-claimants comes to ₹10,89,000/-.

9. 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 ₹10,89,000/- from ₹5,96,000/- as awarded by the Tribunal. The appellants-claimants shall also 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 shall remain 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.

27.08.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

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