IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision:8.7.2016

1. **FAO No.6972 of 2014(O&M)**

New India Assurance Company Ltd. ....Appellant

VERSUS

Meenu and others .....Respondents

Present: Mr. Vinod Gupta, Advocate for the appellants.

Mr. M.S. Khillan, Advocate for respondents No.1 to 3.

None for respondent No.4.

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2. **FAO No.9254 of 2014(O&M)**

Meenu and others ....Appellants

VERSUS

Nirmal and another .....Respondents

Present: Mr. Vinod Gupta, Advocate for the appellants.

Mr. M.S. Khillan, Advocate for respondents No.1 to 3.

None for respondent No.4.

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3. **FAO No.7951 of 2014(O&M)**

Sushma and others ....Appellants

VERSUS

Nirmal Singh and another .....Respondents

Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate for the appellant.

Mr. Vinod Gupta, Advocate for respondent No.2.

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4. **FAO No.8433 of 2014(O&M)**

New India Assurance Company Ltd. ….Appellant

VERSUS

Sushma and others .....Respondents

Present: Mr. Vinod Gupta, Advocate for the appellant.

Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate for respondents No.1 to 6.

None for respondent No.7.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

REKHA MITTAL, J.

This order shall dispose of FAO Nos.6972, 9254, 7951 and 8433 of 2014 as these have emerged out of the same award dated 03.04.2014 passed by the Motor Accident Claims Tribunal, Karnal (for brevity 'Tribunal') whereby compensation has been awarded in favour of Sushma and others (appellants in FAO No.7951 of 2014) in respect of death of Sh. Baljeet Saini and Meenu and others (appellants in FAO No.9254 of 2014) qua death of Arun Kumar Mehta in a motor vehicular accident that took place on 02.03.2012 at about 2:15 PM due to rash and negligent driving of truck No.RJ-14-IG-5697 driven by respondent - Nirmal Singh.

The claimants in the petitions have filed separate appeals seeking enhancement of compensation whereas two separate appeals i.e. FAO No.8433 of 2014 and 6972 of 2014 by the New India Assurance

Company Ltd. (hereinafter referred to as the 'Company') have been filed to assail the awards passed in favour of the claimants.

FAO Nos.7951 and 8433 of 2014

The parties shall be referred to as the 'claimants' and the 'Company' for the sake of convenience.

Counsel for the claimants has submitted that the learned Tribunal has not awarded any compensation for increase in income towards future prospects. It is argued that as Baljeet Saini (since deceased) was 41 years old, the said benefit to the extent of 30% of his income is admissible in the light of judgment of Hon'ble the Supreme Court Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170.

Counsel for the Company has submitted that the Tribunal has awarded excess compensation under conventional heads and the same is liable to be reduced. The widow of the deceased has been awarded an amount of Rs.1 lakh for loss of consortium and another amount of Rs.1 lakh for loss of love and affection. It is argued that loss of consortium includes loss of love and affection. It is further argued that compensation awarded to minor sons and mother of the deceased towards loss of love and affection also requires modification by taking a reasonable view.

I have heard counsel for the parties, perused the paper-book and the records of the Tribunal.

The plea of the claimants that they are entitled to benefit of increase in income for future prospects is meritorious in view of judgment of Hon'ble the Apex Court in Rajesh's case (supra) wherein a three-Judge Bench has held that in case the deceased victim is below 40 years, there should be addition of 50% to the actual income of the deceased while computing future prospects, 30% in case the deceased was in the age group of 40-50 years, 15% in a case where the victim is between the age group of 50-60 years so as to make the compensation just, equitable, fair and reasonable. The claimants are allowed benefit of increase in income for future prospects to the extent of 30% as the deceased was in the age group of 40-50 years. The loss of dependency, after allowing benefit of increase in income would be Rs.25,60,740/- (Rs.1,87,600/- x 14 + 30% future prospects – Rs.8,53,580/- i.e. 1/4th dependency).

In Rajesh's case (supra), the Apex Court has held that consortium is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. It has further been held that it would not be proper to award a major amount under this head and their Lordships are of the view that it would only be just and reasonable that the Courts award at least Rs.1 lakh for loss of consortium.

In view of the above, I find merit in contention of the Company that widow of the deceased shall be entitled to an amount of Rs.1 lakh in all for loss of consortium as well as love and affection.

There cannot be any dispute that the Tribunal has an obligation to award just compensation. In Smt. Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77, it has been held that just compensation is adequate compensation which is fair and equitable on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so. Taking a clue from the various judgments rendered by Hon'ble the Apex Court, it is expedient in the interest of justice that compensation awarded to the minor children and mother of the deceased is modified. The two minor sons of the deceased shall be entitled to an amount of Rs.1,50,000/-

in equal shares and the mother shall be entitled to an amount of Rs.50,000/- towards loss of love and affection. The remaining amount granted under conventional heads shall remain intact.

In view of what has been discussed hereinabove, the total amount of compensation payable to the claimants comes to Rs.29,95,740/- [Rs.25,60,740/- (dependency) + Rs.1,50,000/- + Rs.50,000/- (loss of love and affection to children and mother, respectively) + Rs.1,00,000/- (loss of consortium) + Rs.10,000/- (transportation) + Rs.25,000/- (last rites)]. In this manner, the enhanced compensation comes to Rs.3,90,940/- (Rs. 28,95,740/- - Rs.25,04,800/-), payable to widow of the deceased with interest, in terms of award passed by the Tribunal. The enhanced compensation payable to the widow shall be deposited in a Fixed Deposit Receipt for a period of two years.

The appeals are disposed of accordingly.

FAO Nos.6972 and 9254 of 2014

In view of submissions made in the aforesaid appeals and decision rendered therein, the claimants are allowed benefit of increase in income for future prospects to the extent of 50% as the deceased was in the age group of 30-40 years. The loss of dependency, after allowing benefit of increase in income would be Rs.21,12,000/- [Rs.1,32,000/- x 16 + 50% future prospects = Rs.31,68,000/- - Rs.10,56,000/- i.e. 1/3rd dependency].

The widow of the deceased shall be entitled to an amount of Rs.1,00,000/- in all for loss of consortium as well as love and affection. The mother of the deceased shall be entitled to an amount of Rs.50,000/- towards loss of love and affection. The remaining amount granted under conventional heads shall remain intact.

In view of what has been discussed hereinabove, the total amount of compensation payable to the claimants comes to Rs.22,97,000/- [Rs.21,12,000/- (dependency) + Rs.50,000/- (loss of love and affection to mother) + Rs.1,00,000/- (loss of consortium) + Rs.10,000/- (transportation) + Rs.25,000/- (last rites)]. In this manner, the enhanced compensation comes to Rs.5,54,000/- (Rs. 22,97,000/- - Rs.17,43,000/-), payable to widow of the deceased with interest, in terms of award passed by the Tribunal. The enhanced compensation payable to the widow shall be deposited in a Fixed Deposit Receipt for a period of two years.

The appeals are disposed of accordingly.

JULY 8, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**