IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.5656 of 2015

Date of decision : 27.08.2016

Pinki and others

......Appellants

Versus

Naib Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Man Mohan, Advocate for appellants.

Ms. Vandana Malhotra, Advocate for respondent No.3-Insurance Company.

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DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 05.03.2015, passed by the learned Motor Accidents Claims Tribunal, Panchkula (hereinafter called the "Tribunal") whereby the appellants-claimants have been awarded compensation to the tune of ₹11,33,000/- on account of death of Mohan Singh in the motor vehicular accident, which took place on 29.07.2013.

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

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

4. Learned counsel for the appellants-claimants contended that the deceased was a photographer by profession and was earning ₹20,000/-

per month, which is established from the statement of PW3 Sita Ram. He further contended that the Tribunal has wrongly taken the income of the deceased to be ₹6000/- per month. The future prospects have also been granted less. The deceased was below 40 years of age. 50% of the income of the deceased should be adduced towards future prospects. He further contended that the learned Tribunal has also wrongly deducted 1/3rd of the income of the deceased towards his personal and living expenses. It should have been 1/4th in view of the number of the dependents. He further contended that no amount has been awarded to the children and mother of the deceased on account of loss of love and affection. Thus, he contended that the learned Tribunal has not awarded the just compensation.

5. On the other hand, Ms Vandana Malhotra, Advocate, learned counsel for the respondent-Insurance Company contended that there was no documentary evidence to establish the income of the deceased and that deceased was earning ₹20,000/- per month. The income of the deceased taken by the learned Tribunal at the rate of ₹6000/- per month is also on the higher side. She further contended that no future prospects were admissible to the income of the deceased as he had no permanent job. The learned Tribunal has also awarded just compensation under the other conventional heads.

6. I have duly considered the aforesaid contentions.

7. As per the case of the appellants-claimants, the deceased was working as a photographer and was earning ₹20,000/- per month. The entire case of the appellants with respect to the profession and income of the

deceased is based on the oral evidence. No documentary evidence has been adduced by the appellants with respect to the income and profession of the deceased. So, I do not find any infirmity in the conclusion of the learned Tribunal who has determined the income of the deceased to be ₹6000/- per month treating him to be a skilled worker.

8. The contentions raised by learned counsel for the respondent-Insurance Company that no future prospects should have been added to the income of the deceased deserves outright rejection as the learned Tribunal has awarded the future prospects to the extent of 40% of the income of the deceased and the said findings of the learned Tribunal have not been challenged by the respondent Insurance Company by filing the cross-objections/cross appeal.

9. The point to be seen is as to at what rate the future prospects were permissible to the income of the deceased. It is not disputed that the deceased was below 40 years of age. So, as per the law laid down by the Hon'ble Apex Court in cases ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77*** and ***Rajesh & others Vs. Rajbir Singh & others, 2013(3) RCR (Civil) 170***, 50% of the income of the deceased should have been added towards the future prospects. So, the total income of the deceased comes to ₹9000/- per month *i.e.* ₹1,08,000/- per annum.

10. The present claim petition has been filed by the widow, two children and mother of the deceased who were dependent upon the income of the deceased. Thus, deceased Mohan Singh had four dependents. As per

the law laid down by the Hon'ble Apex Court in case ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another*** (supra) where the number of dependent family members is 4 to 6, the deduction should be 1/4th. Thus, 1/4th of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to ₹81,000/-. The learned Tribunal has applied the multiplier of 15. In the absence of any evidence with respect to exact age of the deceased, no fault can be found with the multiplier selected by the learned Tribunal. So, the loss of dependency comes to ₹12,15,000/- (81,000 X 15).

11. In addition to the aforesaid amount besides ₹1,00,000/- towards loss of consortium to appellant-claimant Smt. Pinki and funeral expenses amounting to ₹25,000/- already granted by the learned Tribunal, appellants-claimants No.2 and 3 minor sons of deceased Mohan Singh shall be entitled to ₹1,00,000/- towards loss of love, care and guidance. Appellant-claimant Smt. Salindro the mother of the deceased shall also be entitled to ₹1,00,000/- towards loss of love and affection of her son. Thus, the total amount of compensation payable to the appellants-claimants comes to ₹15,40,000/-

12. 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 ₹15,40,000/- from ₹11,33,000/- 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.

13. 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