

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

FAO No.7334 of 2016(O&M)

Date of decision:9.12.2016

National Insurance Co. Ltd.

....Appellant

VERSUS

Smt. Sudesh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Lalit Garg, Advocate for the appellant.

REKHA MITTAL, J.(Oral)

CM No.25111-CII of 2016

Prayer in this application is for condoning delay of 2 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Ms. Karishma R. Negi, A.O., NIC Chandigarh, the application is allowed and delay of 2 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.7334 of 2016

The present appeal directs challenge against award dated 02.08.2016 passed by the Motor Accidents Claims Tribunal, Jhajjar (in short 'the Tribunal') whereby compensation has been awarded in favour of Smt. Sudesh and others in respect of death of Anil Kumar in a motor vehicular accident that took place on 26.08.2015.

The Tribunal assessed income of the deceased at Rs.1,00,000/- per annum, added 50% for future prospects, deducted 1/4th

for personal expenses, applied a multiplier of 15 to compute loss of dependency at Rs.16,87,500/-. In addition, an amount of Rs.1,00,000/- for loss of consortium to the widow, Rs.1,00,000/- for loss of love and affection to petitioners No.2 to 5 (children of the deceased), Rs.1,00,000/- for loss of old age support and security to mother and Rs.25,000/- for funeral expenses has been awarded making total compensation to Rs.20,12,500/-.

Counsel for the appellant has challenged the award primarily on two counts. The first submission made by counsel is that income of the deceased assessed by the Tribunal at Rs.1,00,000/- per annum i.e. more than Rs.8,000/- per month is on higher side. It is further argued that as land left behind by the deceased is available to his family, there was no reason for the Tribunal to award additional income for future prospects. Another submission made by counsel is that the Tribunal has awarded an amount of Rs.1,00,000/- for loss of old age support and security to the mother which is excessive. It has also been submitted that benefit of future prospects may not be allowed as the matter in this regard is pending consideration before a Larger Bench of Hon'ble the Supreme Court in view of reference made in **National Insurance Company Ltd. vs. Pushpa, SLP (C) No.16735 of 2014, decided on 02.07.2014.**

With regard to claimants being not entitled to benefit of future prospects because of the deceased being an agriculturist, counsel has relied upon judgments of this Court **Rajbir Kaur and another Vs. M/s Nambardar Devraj Career Pvt. Ltd. and others, FAO No.2128 of 2013, decided on 23.12.2014** and **Dayal Singh Vs. Daljeet Singh and others, FAO No.2482 of 2007, decided on 04.09.2015.**

I have heard counsel for the appellant, perused the paper-book particularly the statement of Sudesh, widow of the deceased, made available during course of hearing.

Smt. Sudesh tendered into evidence her affidavit Ex.PW1/A by way of examination in chief. In para 5 of the affidavit, she has deposed that Anil Kumar, her husband used to cultivate 16 acres of land out of which 8 acres of land was owned and possessed by the deceased and his brother but was being cultivated by the deceased as his brother Sunil used to reside outside the village and the deceased had been cultivating another 8 acres of land owned by his uncle Raj Singh Dalal who used to reside in U.S.A. She has further deposed that the deceased owned a tractor and used to work on hire by using laser leveler and rapper (fodder cutter) and had been earning approximately Rs.50,000/- per month. She was subject to cross examination but there is no challenge to her testimony with regard to the deceased cultivating 8 acres of land co-owned by him and his brother and another 8 acres of land owned by his uncle R.S. Dalal residing in U.S.A. Similarly, there is no challenge to her testimony that the deceased had been using his tractor on hire by using laser leveler and rapper (fodder cutter). Not only this, there is no cross examination qua ownership of land by the deceased, his brother and uncle. Under these circumstances, no error much less infirmity can be found in the findings of the Tribunal assessing his (deceased's) income at Rs.1,00,000/- per annum more particularly in the circumstances that in August 2015, even minimum wage for an unskilled worker fixed by the State of Haryana was Rs.7,600/- per month.

So far as plea of the appellant with regard to allowing benefit of future prospects, no doubt, land owned by the deceased has been left for his family. It cannot be said that had the deceased remained alive there would not have been appreciation qua value of his services as a cultivator and manager. The Tribunal has relied upon judgment of this Court **Smt. Seema and others Vs. Bijender Singh and another**, FAO No.692 of 2000, decided on 25.05.2016, in support of its findings that even in the case of an agriculturist, benefit of future prospects is to be allowed. Counsel for the appellant has referred to the judgments passed by the co-ordinate Benches but he is not sure if there was challenge to the judgments before the higher Court. Even otherwise, it does not appeal to reason that if value of services of a person whose income is assessed on the basis of minimum wage is to increase with passage of time, the person who owns land would not get additional income, to deny future prospects. The plea that the matter is pending before a Larger Bench is not sufficient to deny benefit of future prospects till the judgment in **Rajesh and others Vs. Rajbir Singh and others**, 2013 (3) RCR (Civil) 170, is varied or set aside.

This brings the Court to award of compensation of Rs.1,00,000/- to the mother towards old age support and security. I do not find any reason to interfere in the award qua Rs.1,00,000/- allowed to the mother particularly in the circumstances that the Tribunal has not allowed any benefit for loss of estate.

For the foregoing reasons, the appeal fails and is accordingly dismissed in *limine*.

The amount of Rs.25,000/- deposited with this Court be
remitted to the Tribunal for payment to the claimants.

DECEMBER 9, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no