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

**FAO No.1166 of 2003**
**Date of Decision.21.07.2017**

Darshni Devi and others ........Appellants

Vs

Sahib Singh alias Pappan and others ........Respondents

Present: Mr. Ramesh Kumar Dhiman, Advocate for the appellants.

Mr. R.C. Gupta, Advocate for the insurance company.

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

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**AMIT RAWAL J.(ORAL)**

The appeal is for enhancement of compensation for death of a male aged 28 years. He was going on a scooter bearing registration No.HR-02-C-1327 when a tractor attached with a trolley bearing registration No.HR-02-F-1337 being driven by respondent No.1 rashly and negligently, hit the scooterist from behind, resulting into fatal injuries. Before death, the deceased remained hospitalized from 07.11.2001 to 13.11.2001. The claimants are the widow, two daughters, two sons and parents. The deceased was stated to be running an *atta chakki* and earning ₹15,000/- per month.

The Tribunal in the absence of any income proof, took the income of the deceased as ₹3000/- per month, made a cut of 1/3rd towards personal expenses and applied a multiplier of 17 to assess the loss of dependency at ₹4,08,000/-. It add another sum of ₹12,000/- towards transportation of deceased to PGI and medical expenses, ₹5000/- towards funeral expenses and last rites and ₹5000/- towards loss of consortium.



Learned counsel for the appellants contends that the Tribunal has grossly erred in taking the income of deceased to a meager sum of ₹3000/- per month and did not provide any increase of future prospects. The deduction of 1/3rd is also on higher side whereas it should have been 1/5th keeping in view the fact that there are seven dependents. The amounts assessed towards loss of consortium, loss of love and affection and funeral expenses are also on lower side, thus, there is definite scope for enhancement.

On the contrary, learned counsel appearing for the insurance company submits that the Tribunal has assessed all the heads of claim appropriately, thus, there is no scope for enhancement.

I have heard learned counsel for the parties and appraised the paper book. As per the ratio decidendi culled out by Hon'ble Supreme Court in ***Sarla Verma Vs. DTC 2009(6) SCC 121*** and other subsequent judgments, the amount of compensation is required to be re-assessed. I will take the income of the deceased as assessed by the Tribunal i.e. ₹3000/- per month but apply a cut of 1/4th for personal expenses, keeping in view the fact that though the number of dependents are seven but the father of deceased has owned agricultural land and earning sufficiently, therefore, the father cannot be said to be dependent upon the deceased son. I will adopt a multiplier of 17 as adopted by the Tribunal, however, I will provide ₹1 lac towards loss of consortium to the wife, ₹75,000/- each to the four children and ₹50,000/- to each parent for loss of love and affection. I will add another sum of ₹5,000/- towards loss of estate and ₹25,000/- towards funeral expenses. I will also retain the sum of ₹12,000/- provided towards transportation and medical expenditure.



However, as regards the increase in income as future prospects, the Hon'le Supreme Court in the ratio decidendi culled out in the judgment rendered in ***Chikkamma and another Vs. Parvathama and another*** passed in Civil Appeal No.3409 of 2017 decided on 28.02.2017 has refused to grant claim for future prospects with regard to self employed person, owing to the fact that the issue with regard to award of future prospects of a self-employed person is pending before a larger Bench of Hon'ble Supreme Court. The relevant paragraph 9 of the same reads as under:-

> *"9. Taking into account the fact that the deceased was a self employed person and also as the question with regard to award of future prospects of a self employed person is presently pending before a larger Bench of this Court and as some enhancement of compensation has already been made by us, we are of the view that in the facts of the present case, the claim for future prospects ought not to be gone into by us. The said claim, therefore, is refused.*

In view of the ratio decidendi culled out by Hon'ble Supreme Court in ***Chikkama's case*** (supra), I will constrain myself to award any amount for future prospects at this stage, for, the aforementioned issue is pending adjudication before the larger Bench of Hon'ble Supreme Court. The other heads of claim are tabulated as under:-

| **FATAL ACCIDENT** | | | |
|---|---|---|---|
| Age | 28 years | | |
| Occupation | Runing atta chakki | | |
| Claimants | Widow, four children and parents | | |
| | **Heads of claim** | **Tribunal** | **High Court** |
| Sl. No. | | Amount (Rs) | Amount (Rs.) |
| 1 | Income | 3000 | 3000 |
| 2 | Add, % of increase | | |
| 3 | Less, Deduction $1/4^{th}$ | 2000 | 2250 |
| 4 | Multiplicand (annualized by multiplying 12) | 24000 | 27000 |
| 5 | Multiplier | 17 | 17 |

| | | | |
|---|---|---|---|
| | **FATAL ACCIDENT** | | |
| 6 | Loss of dependence | 4,08,000 | 4,59,000 |
| 7 | Medical Expenses & Transportation | 12,000 | 12,000 |
| 8 | Loss of Consortium | 5000 | 1,00,000 |
| 9 | Loss of love and affection to children and parents | -- | 4,00,000 |
| 10 | Loss to estate | -- | 5000 |
| 11 | Funeral expenses | 5000 | 25000 |
| | **Total** | **4,30,000** | **10,01,000** |

The total compensation payable shall be ₹10,01,000/-. The amount in excess over what has already been awarded by the Tribunal shall also attract interest @6% from the date of filing of the appeal till the date of payment. The enhanced amount shall be distributed amongst the claimants in the ratio of 2:2:2:2:2:1, in essence, the mother will get half of the share of other claimants i.e. widow and children. The liability shall remain the same as fixed by the Tribunal.

The award stands modified and the appeal is allowed to the above extent.

**(AMIT RAWAL)**
**JUDGE**

**July 19, 2017**
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No