IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.3825 of 2004

Date of decision : 24.01.2017

Nidhi Gupta and others

......Appellants

Versus

Daulat Ram and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. N.K. Bansal, Advocate for the appellants.

Mr. Gopal Mittal, Advocate for the respondent-Insurance Company.

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DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 06.05.2004, passed by the learned Motor Accidents Claims Tribunal, Panchkula (hereinafter called the "Tribunal"), in a petition filed under Section 166 of the Motor Vehicles Act, 1988 ("Act" - for short), whereby the appellants-claimants have been awarded compensation to the tune of ₹8,74,000/- on account of death of Rajnish Gupta caused in the motor vehicular accident which took place on 08.03.2002 at about 11:30 p.m.

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

3. I have heard learned counsel for the parties and have gone through the record of the case meticulously.

4. Initiating the arguments, learned counsel for the appellants-claimants contended that the deceased was an income tax payee. His income was ₹26,000/- per month but the learned Tribunal has wrongly taken the income of the deceased to be ₹6000/- per month. He further contended that the deceased was a young man of 26 years of age. He was a businessman but no future prospects have been added to the income of the deceased. He further contended that less amount has been given for funeral expenses and other conventional heads. No amount has been awarded to the minor son and parents of the deceased towards loss of love and affection. Thus, he contended that the learned Tribunal has not awarded the just amount of compensation.

5. On the other hand, Mr. Gopal Mittal, Advocate, learned counsel for respondent-Insurance Company contended that the income of the deceased has been rightly assessed by the learned Tribunal. The income tax return produced by the appellants-claimants was not supported from any other evidence and it was also filed after the death of the deceased. He further contended that learned Tribunal has awarded the just compensation under all other relevant heads, so there is no scope for any further enhancement.

6. I have duly considered the aforesaid contentions.

7. As per the statement of appellant-claimant Bharat Bhushan (PW-5) the father of the deceased, the deceased was working as Manager with M/s Saraswati Stone Crusher and was getting a salary of ₹6000/- per month. He also deposed that he was the sole proprietor of M/s Maa Durga

Grit Udyog and Gupta Carriage Contracts and his monthly income was approximately ₹26,000/-. He further deposed that his gross income for the financial year 2001-2002 has been reflected as ₹3,11,651.50 in the income tax return Ex.P13. But in the cross-examination he admitted that no regular books of accounts were maintained by the deceased. The appellants-claimants have also not produced the income tax returns for the previous financial years. PW-5 Bharat Bhushan has also admitted in the cross-examination that the income tax return Ex.P13 was filed by Smt. Nidhi Gupta, the wife of the deceased after his death. The claimants have not brought on file the copy of any income tax return filed by deceased Rajnish Gupta during his life time. The income tax return Ex.P13, which is not supported from any other corroborative documentary evidence and moreover the same has been filed after the death of Rajnish Gupta by his wife, cannot be taken into consideration. Thus, in these circumstances, I do not find any infirmity in the conclusion of the learned Tribunal taking the income of the deceased to be ₹6000/- per month.

8. However, learned Tribunal has not awarded any future prospects towards the income of the deceased. The deceased was young man of 26 years of age. He belongs to a business family, so there were every possibility of appreciation of the income of the deceased with the passage of time. Thus, keeping in view the age of the deceased, 50% of his income was required to be added towards the future prospects. Thus, the total income of the deceased comes to ₹9000/- per month *i.e.* ₹1,08,000/- per annum. The father of the deceased, who was 54 years of age, cannot be

considered to be the dependent upon the income of the deceased as he himself was a partner in M/s Saraswati Stone Crusher, so the appellant-claimant Nidhi Gupta the widow, master Urchit Gupta minor son and Smt.Sushma Gupta, the mother of the deceased shall be considered to be the dependents upon the income of the deceased. So, 1/3rd of the income of the deceased is to be deducted towards his personal and living expenses. The remainder comes to ₹72,000/-. The deceased was 26 years of age at the time of his accidental death. In view of the age of the deceased, the multiplier of 17 shall be applicable. Thus, the loss of dependency comes to ₹12,24,000/-.

9. The learned Tribunal has only awarded ₹10,000/- as funeral charges and loss of consortium towards conventional heads which is highly inadequate. Appellant-claimant Smt.Nidhi Gupta the widow shall be entitled to ₹1,00,000/- towards loss of consortium. Appellant-claimant master Urchit Gupta the minor son of the deceased shall be entitled to ₹1,00,000/- towards loss of love, care and guidance of his father. Smt. Sushma Gupta, the mother of the deceased shall also be entitled to ₹1,00,000/- towards loss of love and affection of her son. The appellants-claimants shall also be entitled to ₹25,000/- towards funeral and last rites expenses. So, the total amount of compensation, payable to the claimants comes to ₹15,49,000/-.

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The total amount of compensation payable to appellants-claimants is enhanced to ₹15,49,000/- from ₹8,74,000/- as awarded by the Tribunal. The enhanced amount of compensation be deposited with the learned Tribunal within a period of 45 days from today,

failing which the appellant-claimant shall be entitled to interest at the rate of 7.5% per annum from the date of filing the claim petition till realisation. The liability to pay the enhanced amount of compensation and the apportionment thereof amongst the claimants shall remain same as determined by the learned Tribunal in the main award.

11. 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-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.

24.01.2017 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No