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

Date of decision: 3.10.2017

1. **FAO No.995 of 2006(O&M)**

Ramnik Jain and others …..Appellants

VERSUS

Nigha Singh @ Nigara Singh and others .....Respondents

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2. **FAO No.2904 of 2005(O&M)**

Saroj Rani and others …..Appellants

VERSUS

Nigha Singh @ Nigara Singh and others .....Respondents

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3. **FAO No.3225 of 2005(O&M)**

Rinki Bansal and others …..Appellants

VERSUS

Nigha Singh @ Nigara Singh and others .....Respondents

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4. **FAO No.3226 of 2005(O&M)**

Kaushalya Devi and others …..Appellants

VERSUS

Nigha Singh @ Nigara Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashok Jindal, Advocate for the appellants.

Mr. Suvir Dewan, Advocate for respondent No.3.

Mr. Deepak Suri, Advocate for respondent No.6.

Mr. Vikas Sharma, Advocate for
Mr. R.K. Bashamboo, Advocate for respondent No.7.

REKHA MITTAL, J. (Oral)

This order shall dispose of FAO Nos.995 of 2006, 2904, 3225, 3226 of 2005 as these have emerged out of the same award dated 11.03.2005 passed by the Motor Accidents Claims Tribunal, Bathinda (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Vinod Kumar Jain, Parshottam Dass, Rajiv Kumar Bansal and Shivji Ram Bansal in a motor vehicular accident that took place on 25.01.2001.

FAO No.995 of 2006

The Tribunal has awarded an amount of Rs.5,70,000/-, detailed hereunder:-

Annual income of the deceased	Rs. 60,000/-
Deduction for personal expenses	1/3rd
Multiplier	14
Loss of dependency	Rs.5,60,000/- (Rs.40000 x 14)
Loss of consortium	Rs.5,000/-
Loss of estate	Rs.2500/-
Expenses on funeral	Rs.2500/-

Counsel for the claimants has submitted that the Tribunal has not allowed benefit of increase in income for future prospects to the extent of 50% as the deceased was 35 years old at the time of occurrence. In support of his contention, he has referred to judgment of Hon'ble the Apex Court **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170.** Further argued that as the deceased left behind his widow, two minor children and mother, held entitled to get compensation, admissible deduction for personal expenses should be 1/4th. The Tribunal has applied a multiplier of 14 but the admissible multiplier is 16. Compensation awarded under conventional heads needs enhancement.

Counsel representing the insurance company has contested claim of the appellants for future prospects on the premise that 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.** Another submission made by counsel is that adequate compensation has been assessed by the Tribunal.

There is no dispute that Vinod Kumar Jain (since deceased) was 35 years old. He was an income tax assessee and income at the rate of Rs.60,000/- per annum has been assessed on the basis of income tax return filed by the deceased. There is nothing on record suggestive of the fact that the deceased had any disability to impair his capacity to work and earn for himself and his family. It is difficult to accept that he would have stagnated at income of Rs.60,000/- per annum had he remained alive particularly in the face of fact that the price index is showing upward trend. Under the circumstances, the mere fact that a reference is pending before a Larger Bench of Hon'ble the Supreme Court is not sufficient to deny benefit of increase in income for future prospects till the judgment in **Rajesh and**

others' case (supra) is varied or set aside.

Counsel for the insurance company has not disputed that in view of age of the deceased and number of dependents on his earning, admissible multiplier would be 16 and deduction for personal expenses to the extent of 1/4th. After extending benefit of future prospects to the extent of 50% and applying multiplier of 16 and deduction for personal expenses to the extent of 1/4th, loss of dependency is calculated at Rs.10,80,000/- [Rs.14,40,000/- (Rs.90,000 x 16) – Rs.3,60,000/- (1/4th deduction towards personal expenses)].

Under conventional heads, claimants shall be entitled to following compensation:-

Loss of consortium to the widow	Rs.1,00,000/-
Loss of love and affection to children	Rs.1,50,000/- (to be shared equally)
Loss of love and affection to mother	Rs.40,000/-
Expenses on funeral/last rites	Rs.20,000/-
Loss of estate	Rs.25,000/-

In view of the above, total compensation comes to Rs.14,15,000/- and the enhanced compensation is Rs.8,45,000/- (Rs.14,15,000/- - Rs.5,70,000/-). The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to claimants in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No.2904 of 2005

The Tribunal has awarded an amount of Rs.3,22,000/-, detailed hereunder:-

Annual income of the deceased	Rs.36,000/-
Deduction for personal expenses	1/3rd
Multiplier	13
Loss of dependency	Rs.3,12,000/- (Rs.24000 x 13)
Loss of consortium	Rs.5,000/-
Loss of estate	Rs.2500/-
Expenses on funeral	Rs.2500/-

Counsel for the claimants has prayed for enhancement of compensation by extending benefit of increase in income for future prospects to the extent of 50%, applying a multiplier of 15 and deduction for personal expenses to the extent of 1/4th. He has prayed for grant of adequate compensation under conventional heads.

In view of the discussion made hereinbefore while deciding FAO No.995 of 2006, the claimants shall be entitled to increase in income for future prospects to the extent of 50%. As the deceased left behind his widow, three minor children and mother, held entitled to get compensation, admissible deduction for personal expenses would be 1/4th. The multiplier to be applied is 15 in the light of enunciation laid down in judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77.** In this manner, loss of dependency comes to Rs.6,07,500/- [Rs.5,40,000/- (Rs.36,000 x 15) + Rs.2,70,000/- (50% towards future prospects) -

Rs.2,02,500/- (1/4th deduction towards personal expenses)].

Under conventional heads, the claimants shall be entitled to following compensation:-

Loss of consortium to the widow	Rs.1,00,000/-
Loss of love and affection to children	Rs.2,25,000/- (to be shared equally)
Loss of love and affection to mother	Rs.40,000/-
Expenses on funeral/last rites	Rs.20,000/-
Loss of estate	Rs.25,000/-

In view of the above, total compensation comes to Rs.10,17,500/- and the enhanced compensation is Rs.6,95,500/- (Rs.10,17,500/- - Rs.3,22,000/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to the claimants in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No.3226 of 2005

The Tribunal has awarded an amount of Rs.1,83,500/- payable with interest, detailed hereunder:-

Annual income of the deceased	Rs.52,000/-
Deduction for personal expenses	1/3rd
Multiplier	5
Loss of dependency	Rs.1,73,500/- (Rs.34700 x 5)
Loss of consortium	Rs.5,000/-
Loss of estate	Rs.2500/-

Expenses on funeral	Rs.2500/-

Shivji Ram- deceased is held to be 50 years old at the time of occurrence. In view of enunciation laid down in **Rajesh and others' case** (supra), the claimants shall be entitled to increase for future prospects to the extent of 15%; admissible deduction for personal expenses would be $1/3^{rd}$ as the deceased left behind his widow, one son and a daughter.

So far as age of the deceased, the Tribunal has assessed him to be of 50 years, on the basis of age mentioned in the post-mortem report Ex.A4. Counsel for the insurance company would inform that Rajiv Kumar Bansal son of Shivji Ram also died in the same occurrence and his age has been assessed at 35 years, sufficient to show that Shivji Ram was more than 55 years of age.

Counsel for the claimants has not disputed that Shivji Ram is father of Rajiv Kumar Bansal, another deceased in the occurrence whose age has been assessed at 35 years. That being so, age of deceased Shivji Ram is taken in the age bracket of 56 to 60 years and admissible multiplier would be 9. Accordingly, loss of dependency comes to Rs.3,58,800/- [Rs.4,68,000/- (Rs.52000 x 9) + Rs.70,200/- (15% towards future prospects) - Rs.1,79,400/- ($1/3^{rd}$ deduction towards personal expenses)].

Under conventional heads, the claimants shall be entitled to following compensation:-

Loss of consortium to the widow	Rs.1,00,000/-
Loss of love and affection to children and grand children	Rs.2,50,000/- (to be shared equally)
Expenses on funeral/last rites	Rs.20,000/-

Loss of estate Rs.25,000/-

In view of the above, total compensation comes to Rs.7,53,800/- and the enhanced compensation is Rs.5,70,300/- (Rs.7,53,800/- - Rs.1,83,500/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to claimants in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No.3225 of 2005

The Tribunal has assessed income of the deceased at Rs.8000/- per month, deducted 1/3rd for personal expenses and applied multiplier of 14 to compute loss of dependency at Rs.8,96,000/-. In addition, an amount of Rs.2500/- for funeral expenses, Rs.5000/- for loss of consortium and Rs.2500/- for loss of estate has been awarded making total compensation to Rs.9,06,000/- payable with interest at the rate of 9% per annum from the date of petition till realization.

Counsel for the claimants would urge that Rajiv Kumar Bansal was a contractor and earning more than Rs.50,000/- per month, therefore, income of the deceased is liable to be assessed on the basis of documents annexures A1 to A9 produced by Rinki Bansal, his widow. It has been argued that Rinki Bansal produced on record copies of Form No.16-A issued by various authorities with regard to tax deducted out of payments made to Rajiv Kumar Bansal in the years 1999-2000 and 2000-2001. It has further been argued that widow of the deceased also produced two income tax returns wherein income of the deceased for the assessment year 2000-2001 is shown as Rs.6,39,576/- and Rs.3,27,060/- for the assessment year 2001-02. It is submitted that though the income tax returns have been filed subsequent to death of Rajiv Kumar Bansal but the claimants have produced documents with regard to audit of accounts of Sh. Rajiv Kumar Bansal by a firm of Chartered Accountants, A. Lal and Company. In addition, it is argued that the Tribunal has wrongly applied multiplier of 14 as admissible multiplier is 16. The claimants are entitled to increase in income for future prospects to the extent of 50% in the light of ratio laid down in **Rajesh and others's case** (supra). The last submission made by counsel is that compensation awarded under conventional heads needs enhancement.

The Tribunal in paras 41 and 42 of the award has taken note of the fact that Rajiv Kumar Bansal was a Government contractor and he was given big contracts running into crores. It appears that this finding of the Tribunal is based upon tax deducted from bills running into lakhs of rupees. In the year 1999-2000, total payments made and tax deducted are as under:-

Sr.No.	***Date/year***	***Payment made***	***Tax deducted***
1.	1.4.1999-31.3.2000	**Rs.4,43,750/- Ex.AW7/1**	**Rs.10,938/-**
2.	1.4.1999-31.3.2000	**Rs.38,90,786/- Ex.AW7/2**	**Rs.85,596/-**
3.	1.4.1999-31.3.2000	**Rs.1,32,820/- Ex.AW7/3**	**Rs.2657/-**
4.	12-1-2000	**Rs.7,06,445.26/-Ex.AW7/4**	**Rs. 15,542/-**

Sr.No.	*Date/year*	*Payment made*	*Tax deducted*
5.	12-2-2000	**Rs.5,26,502.18/- Ex.AW7/5**	**Rs. 11,563/-**
6.	12-3-2000	**Rs.8,03,902.25/- Ex.AW7/6**	**Rs. 17,686/-**

The Tribunal has rightly held that the payments made to deceased represent his expenses and profit. Even if we take a miser estimation of profit to the extent of 4% coupled with liability to pay income tax, in my considered opinion, income of the deceased can be assessed on the basis of latest income tax return for the assessment year 2001-2002. Accordingly, annual income of the deceased is assessed at Rs.2,45,000/-. After deducting 1/3rd towards personal expenses, applying a multiplier of 16 as the deceased was 35 years old at the time of occurrence and addition of 50% qua future prospects, loss of dependency comes to **Rs.2,45,000 x 16 = 39,20,000 +19,60,000(50%) =58,80,000 -19,60,000 (1/3rd) = Rs.39,20,000/-/-.**

Under conventional heads, the claimants shall be entitled to the following compensation:-

Loss of consortium to the widow	-Rs. 1,00,000/-
Loss of love and affection to children	-Rs.2.25 lakhs (to be shared equally)
Loss of love and affection to mother	-Rs. 40,000/-
Expenses on funeral	-Rs. 20,000/-
Loss of estate	-Rs. 25,000/-

In view of the above, total compensation comes to

Rs.43,30,000/- and the additional amount is Rs.34,24,000/- (43,30,000 – 9,06,000). The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization payable to widow of the deceased except the amount awarded for loss of love and affection to the children and mother of the deceased.

Appeal stands disposed of accordingly.

OCTOBER 3, 2017 **(REKHA MITTAL)**
'D. Gulati/paramjit' **JUDGE**

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