Sr. No. 253

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

**FAO No. 1704 of 2015(O&M)
Decided on: 10.08.2017**

Rijwana and others

..........Appellants

versus

Suresh and others

..........Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Virendra Rana, Advocate
for the appellants.

Mr. Sanjeev Kodan, Advocate
for respondent No.3.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the claimants challenging the Award passed by the Motor Accidents Claim Tribunal, Mewat(hereinafter referred to 'the Tribunal'), whereby an amount of ₹8,37,600/- was awarded on account of death of Deen Mohd in the accident.

The brief facts of the case are that the present claim petition has been filed by the widow and minor son and daughters of Deen Mohd. It was pleaded in the claim petition that on 27.09.2013 the said Deen Mohd along with another person was going from Aligarh to Khurja for loading his vehicle bearing Registration No. HR-55-F-1179. When they reached near Guvana bridge then the fuel of their vehicle finished. After parking the said vehicle on the left hand side of the road, the other person and Deen Mohd. were pumping out the air from the fuel pump. In the mean-time, vehicle bearing Registration No. UP-13-F-0808 driven by respondent No. 1 in a rash and negligent manner came from Aligarh side and hit their vehicle. Due to this impact, Deen Mohd suffered serious multiple injuries on his body. He was shifted to hospital where he succumbed to the injuries. It was pleaded that the said Deen Mohd was a healthy person and was working as a conductor on the above said vehicle bearing Registration No.HR-55-F-1179 and was earning Rs. 10,000/- per month.

On notice, respondent Nos. 1and 2 filed written statement. They denied the factum of accident. It was further claimed that the FIR was registered against respondent No. 1 in collusion with the claimants and that he was not involved in the accident in question.

Respondent No. 3-Insurance Company also filed separate written statement taking the plea regarding the driver not possessing the valid driving license. Even the factum of the accident was denied claiming the FIR also to be incorrect or collusive.

Parties led their respective evidence.

From the side of the claimants, the appellant Rijwana herself stepped into the witness box and examined Afsar as PW-2 and tendered into evidence the documents Ex:P1 to Ex:P11. On the other hand, the respondent did not lead any evidence despite availing the several opportunities.

After appreciating the evidence, the Tribunal held that the accident happened due to negligence of respondent No. 1. While awarding the compensation, the Tribunal held that the factum of employment has not been proved by examining the employer. Therefore, on the basis of the minimum wages prescribed at the relevant time, the Tribunal took the notional income of the deceased at ₹5400/- per month treating him to be a unskilled labour. It was further held that the deceased left behind him four dependents i.e. widow and three minor children, therefore, in view of the judgment of Hon'ble the Supreme Court in ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr 2009(3) RCR(Civil) 77ACJ 1298(SC),*** the Tribunal applied a deduction of 1/4th towards the personal expenses of the deceased. Hence, the annual dependency was assessed to be ₹48,600/-. Taking the age of the deceased to be 35 years the multiplier of 16 was applied by the Tribunal in view of the ***Sarla Verma's case(supra)***. Still further appellant No. 1 was granted a compensation of ₹10,000/- towards Loss of Consortium. Besides this ₹25,000/- was awarded towards the Funeral Expenses in view of the law laid down by the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir Singh and others 2013 ACJ 1403***. Still further an amount of ₹25,000/- was awarded towards Loss of Love and Affection to appellants No. 2 to 4. Thus, total compensation of ₹8,37,600/- was awarded by the Tribunal. While rejecting the plea of the Insurance Company, the same was held to be liable to pay the compensation.

While arguing the case, learned counsel for the appellants has submitted that the Tribunal has not awarded any amount on account of future prospects. Still further, it is his submission that amount awarded on account of loss of consortium and loss of love and affection has to be enhanced in view of the judgment of the Hon'ble Supreme Court rendered in the case of ***Vimal Kanwar and others vs. Kishore Dan and others 2013(2) R.C.R.Civil 945*** and it has to be awarded ₹ 1,00,000/- on each count. Still further it is the submission of learned counsel for the appellants that the amount of compensation on account of loss of dependency has to be granted and also on account of future prospects, since the same has not been granted by the Tribunal.

Learned counsel for the respondent has vehemently opposed any enhancement in the compensation. He has submitted that the point regarding future prospects is pending reference before the Supreme Court. Therefore, no compensation can be granted on account of future prospects since the deceased was, at the best, self employed person.

After hearing learned counsel for the parties and perusing the records, this Court is of the opinion that the submissions made by learned counsel for the appellants deserve acceptance. The Hon'ble Supreme Court in the case of ***Vimal Kanwar and others(supra)*** has held that an amount of loss of love and affection has to be ₹ 1,00,000/- and likewise the appropriate amount for loss of consortium would also be ₹1,00,000/-. Accordingly, the amount awarded to the appellants on account of loss of love and affection is enhanced to ₹ 1,00,000/-. Likewise the compensation on account of loss of consortium is also enhanced to ₹ 1,00,000/- in favour of appellant No. 1.

So far as the enhancement of the dependency on account of future prospects is concerned, the Hon'ble Supreme Court in case of ***Rajesh and others(supra)*** has held that the compensation on account of future prospects has to be awarded even in the case of self employed person. This judgment holds the field till today. Therefore, following the judgment of the Hon'ble Supreme Court the benefit of future prospects is awarded in favour of the appellants. In this case, since the deceased has been found to be of 35 years of age, therefore, in terms of the judgment of the Hon'ble Supreme Court in **Rajesh and others(supra)** 50% of the income shall be the proper amount to be added on account of future prospects. Accordingly, the appellants are granted the benefits of future prospects. *After taking 50% on account of future prospects [*5400+2700(50% of 5400) = 8100*]and applying 1/4th deduction on account of personal expenses* [8100-2025(8100 x 1/4)=6075] *the* loss of dependency comes to ₹11,66,400/-[6075x 12 x 16].

Learned counsel for the respondent-Insurance Company has resisted the grant of the benefit on account of future prospects by arguing that the matter of granting future prospects to the dependents of self employed deceased person has been referred to the larger Bench of the Hon'ble Supreme Court. However, this argument of learned counsel for the respondent-Insurance company deserves to be rejected because the judgment of the Hon'ble Supreme Court rendered in the case of ***Rajesh and others(supra)*** is the binding precedent for this Court on the point of grant of future prospects to the dependents of a deceased self employed person till the same is revised by the Hon'ble Supreme Court. This Court has already taken this view in the case of ***Future General India Insurance Co. Ltd. @ Future General Insurance Co. Ltd. vs. Rekha and others, FAO No.8067 of 2014*** *decided on 17.07.2017.* The relevant part is reproduced as under:-

> *"After considering the rival submissions of the counsels of the parties, this court is of the view that although the point of future prospects has been referred to the larger bench of the Hon'ble Supreme Court, however, till the larger bench takes a contrary view; the judgment of the Hon'ble Supreme Court which holds the field as of today; is binding precedent for this court. The point as decided by the larger bench of the Supreme Court shall hold the field only after and as and when it is pronounced by the Hon'ble Supreme Court. The otherwise available right of a party before the Court can not be denied by this Court only for the reason that the Hon'ble Supreme Court has kept the point qua that right for reconsideration. Keeping a point for*

reconsideration does not, by implication, over-rules the existing judgment/precedent on that point. Therefore, the amount of compensation on account of future prospects cannot be denied to the claimants in this case on the ground that the matter has been referred to the larger bench."

In view of the above, the appellants in this case are awarded an amount as given below:-

Sr. NO.	***Head***	***Amount(₹)***
1	**Loss of Dependency**	**11,66,400/-**
2	**Loss of Love and Affection**	**1,00,000/-**
3	**Loss of Consortium**	**1,00,000/-**
4	**Funeral Expenses**	**25,000/-**
	Total	**13,91,400/-**

Interest awarded in the case is retained as was awarded by the Motor Accidents Claim Tribunal, Mewat.

In view of the above, the present appeal is allowed and the Award of the Motor Accidents Claim Tribunal is modified to the extent mentioned above.

10th August, 2017 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*