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

FAO No.4659 of 2013(O&M)

Date of decision: 7.9.2017

Kiran and others …..Appellants

VERSUS

Manjit and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Malik, Advocate for the appellants.

Ms. Rohini Bedi, Advocate for
Mr. Vishal Goel, Advocate for respondent No.3.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Sonepat (in short 'the Tribunal') in regard to death of Satish Sharma in a motor vehicular accident that took place on 29.11.2011.

The Tribunal assessed income of the deceased at Rs.4,960/- per month, deducted 1/4th for personal expenses and applied multiplier of 14 to compute loss of dependency at Rs.6,24,960/-. In addition, an amount of Rs.5,000/- on account of loss of estate, Rs.5,000/- for expenses on funeral and transportation and Rs.10,000/- for loss of consortium has been awarded, making total compensation to Rs.6,44,960/- payable with interest at the rate of 7.5% per annum from the date of petition till realization.

Counsel for the appellants has submitted that as per document Ex.P3 proved on record, salary of the deceased was Rs.5,625/-, out of which an amount of Rs.658/- was being deducted towards PF, ESI and

Welfare Fund making net salary at Rs.4,967/- per month. It is argued with vehemence that as the amount of PF and ESI would have been available to the deceased himself, this deduction cannot be excluded for assessing loss of dependency. The Tribunal has not allowed benefit of increase in income for future prospects and compensation awarded under conventional heads needs enhancement in the light of judgments of Hon'ble the Supreme Court **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170** and **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945**.

Counsel representing the insurance company has supported the award with the submission that adequate compensation has been awarded. In addition, it is argued that the matter with regard to grant of future prospects is pending 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**.

The Tribunal has assessed income of the deceased at Rs.4,960/- per month by taking into account carry home salary after deduction to the extent of Rs.658/- as pointed out by counsel for the appellants. Since, the amount of deduction would have been available to the deceased himself, the same cannot be excluded for the purpose of computing loss of dependency. Under the circumstances, income of the deceased is to be taken as Rs.5,625/- per month for assessing loss of dependency. The deceased was 45 years old, therefore, admissible addition towards future prospects is 30%. The mere fact that a reference is pending consideration before a Larger Bench of Hon'ble the Supreme Court is not sufficient to deny benefit of future prospects till the judgment of Hon'ble the Supreme Court in **Rajesh and others case (supra)** is varied or set aside. This apart, the deceased left behind his widow, two sons out of them one is minor and his mother. The deceased would not have stagnated at income derived at the time of death had he remained alive. Contention of the insurance company that the claimants are not entitled to benefit of increase in income for future prospects is not tenable. Counsel for the appellants has fairly conceded that deduction for personal expenses and multiplier adopted by the Tribunal are correct in the light of judgment of Hon'ble the Supreme Court in **Smt. Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**. As such, loss of dependency comes to Rs.9,21,375/- [Rs.9,45,000/- (Rs.5625/- x 12 x 14) + Rs.2,83,500/- (30% towards future prospects) – Rs.3,07,125/- (1/4th deduction towards personal expenses)].

Under conventional heads, an amount of Rs.1,00,000/- for loss of consortium to the widow, Rs.1,50,000/- to the children and Rs.50,000/- to the mother for love and affection is awarded. The claimants shall be entitled to an amount of Rs.25,000/- for expenses on funeral/last rites and another sum of Rs.25,000/- for loss of estate.

In view of the above, total compensation comes to Rs.12,71,375/- and the enhanced compensation is Rs.6,26,415/- (Rs.12,71,375/- - Rs.6,44,960/-), which shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable exclusively to widow of the deceased except the amount of loss of love and affection paid to the children and mother of the deceased. The amount falling to share of the minor claimant shall be deposited in a Fixed Deposit Receipt till he attains the age of majority or for a period of three years, whichever is later. The amount falling to the share of widow shall be deposited in a Fixed Deposit Receipt for a period of three years. The claimants shall not be entitled to raise any loan against the FDRs.

The appeal is partly allowed in the aforesaid terms.

SEPTEMBER 7, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no