IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5361 of 2014(O&M)

Date of decision: 10.10.2017

Manju and others …..Appellants

VERSUS

Sharwan Kumar and others .....Respondents

*****

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Khunger, Advocate for the appellants.

Mr. R.C. Gupta, Advocate for respondent No.3.

*****

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Bhiwani (in short 'the Tribunal') in regard to death of Parveen in a motor vehicular accident that took place on 04.01.2013.

The Tribunal awarded compensation of Rs.23,24,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.16,000/-
Deduction for personal expenses	1/4th
Multiplier	16
Loss of dependency	Rs.23,04,000/- (Rs.1,44,000 x 16)
Loss of consortium, estate and funeral expenses	Rs.20,000/-

Counsel for the appellant has pressed for enhancement of compensation both qua loss of dependency as well as under conventional heads. To bring home his contention for enhancement for loss of dependency, it is argued that it has been established on record that the deceased had purchased two pick up dallas (registration No.HR-61-A-5560 and HR-61-A-9517) and two cars Xylo (registration No.HR-16K-6477) and Ritz (registration No.HR-16-L-9122) on loan and was regularly paying installments of loan to the tune of Rs.68,000/- per month. It is argued that the very fact that the deceased was regular in discharging his obligation qua repayment of loan raised for purchase of the aforesaid vehicles is sufficient to prove that his income from business of purchase and sale of vegetables in wholesale was approximately Rs.1,00,000/- per month, therefore, his income is liable to be enhanced.

Another submission made by counsel is that the claimants have not been allowed benefit of increase in income for future prospects to the extent of 50% in the light of enunciation laid down by Hon'ble the Apex Court in **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170**.

Counsel representing the insurance company, on the contrary, would urge that the Tribunal has rightly refused to assess income on the basis of payment of loan amount. It is argued with vehemence that the claimants failed to examine any witness from whom the deceased had been purchasing vegetables or the person to whom he had been selling those vegetables to establish that he was carrying on business of purchase and sale of vegetables in wholesale. The claimants even failed to refer to names of the person from whom the purchase and to whom the sale of vegetables was being made by the deceased. No other evidence has been produced by the claimants if the deceased was owner of any immovable assets to establish his financial status. Another submission made by counsel is that the vehicles purchased by the deceased with financial assistance obtained from certain agencies are available with family of the deceased. The shop being run by the deceased is stated to be looked after by brother and father of the deceased and in these circumstances, income of the deceased is liable to be assessed on the basis of loss of his managerial skills. In addition, it is argued that the claimants have not even produced on record driving licence of deceased that he was authorized to drive pick up dalla.

To refute contention of the claimants qua benefit of increase in income for future prospects, it has been argued that the matter in this regard 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,** therefore, claimants are not entitled to this benefit.

I have heard counsel for the parties, perused the paper-book particularly the statement of Bajrang Lal, brother of the deceased and the award passed by the Tribunal.

Perusal of findings recorded by the Tribunal leaves no manner of doubt that there were four vehicles, two pick up dallas and two cars stood registered in the name of deceased and all these vehicles were purchased by getting financial assistance from different agencies. It has also been proved on record that the deceased was paying an amount of approximately Rs.69,000/- towards loan installments. As has been rightly argued by counsel for the insurance company, claimants have failed to adduce satisfactory much less cogent and convincing evidence that the deceased had been using pick up dallas (goods carriers) for transporting vegetables to carry on business of purchase and sale of vegetables in wholesale. There is no reference to any person from whom deceased had been making purchases or a person to whom he had been selling vegetables. The version of the claimants with regard to deceased doing the business of purchase and sale of vegetables in wholesale does not find corroboration from any independent much less documentary evidence. Under the circumstances, the Tribunal has rightly refused to assess income of the deceased on the basis of loan installments paid by him.

The vehicles which were got financed by the deceased are available to his family for use. The business which is stated to be carried on in a shop in the village is being looked after by the brother and father of the deceased. In the given scenario, findings recorded by the Tribunal assessing income of the deceased at Rs.16,000/- per month cannot be faulted with. However, the claimants shall be entitled to increase in income for future prospects to the extent of 50%. The deceased was a young person aged about 35 years. He left behind a family consisting of his widow, two minor children and parents. There is nothing on record suggestive of the fact that the deceased was suffering from any disability to impair his capacity to work and earn livelihood for himself and his family. The mere fact that 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. The Tribunal has rightly applied cut of 1/4th for personal expenses and multiplier of 16 to compute loss of dependency. In this manner, loss of dependency comes to Rs.34,56,000/-[Rs.30,72,000/-

(Rs.16000 x 12 x 16) + Rs.15,36,000/- (50% future prospects) – Rs. 11,52,000/- (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, care and guidance to children	Rs.1,50,000/- (to be shared equally)
Loss of love and affection to the mother	Rs.50,000/-
Expenses on funeral/last rites	Rs.25,000/-
Loss of estate	Rs.25,000/-

In view of the above, total compensation comes to Rs.38,06,000/- and the enhanced compensation is Rs.14,82,000/- (Rs.38,06,000/- - Rs.23,24,000 /-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to widow and children of the deceased in equal proportion except loss of love and affection to mother of the deceased. The amount falling to share of children shall be deposited in Fixed Deposit Receipts till they attain the age of majority or for a period of 3 years whichever is later. The share of widow shall also be invested in FDR 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.

OCTOBER 10, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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