IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 10.10.2017

1. **FAO No.9643 of 2014(O&M)**

National Insurance Co. Ltd. …..Appellant

VERSUS

Harbans Kaur and others .....Respondents

Present: Mr.Abhinandan Pandhi, Advocate for the appellant.

Mr. Naveen Mandhan, Advocate for respondent No.1.

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2. **FAO No.10590 of 2014(O&M)**

Harbans Kaur …..Appellant

VERSUS

Manjeet Singh and others .....Respondents

Present: Mr. Naveen Mandhan, Advocate for the appellant.

Mr.Abhinandan Pandhi, Advocate for respondent No.3.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J. (Oral)

This order shall dispose of FAOs No.9643 and 10590 of 2014 as these have emerged out of the same award dated 19.08.2014 passed by the Motor Accidents Claims Tribunal, Karnal (in short 'the Tribunal') whereby compensation has been assessed in regard to death of Gurvinder Singh in a motor vehicular accident that took place on 12.11.2012.

The Tribunal awarded compensation of Rs.5,15,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.10,000/-
Deduction for personal expenses	1/4th
Multiplier	5
Loss of dependency	Rs.4,50,000/- (Rs.90,000 x 5)
Loss of love and affection and consortium	Rs.35,000/-
Expenses on funeral and transportation	Rs.30,000/-

FAO No.9643 of 2014 has been filed by the National Insurance Co. Ltd. (hereinafter to be referred as the 'Insurance Company') whereas FAO No.10590 of 2014 has been filed by the claimants seeking enhancement of compensation.

Counsel for the Insurance Company, at the outset, would inform that appeal has been preferred by the insurer to challenge quantum of compensation assessed by the Tribunal.

FAO Nos.9643 and 10590 of 2014

Counsel for the claimant has submitted that as per findings of the Tribunal, deceased was 65 years old but the Tribunal has wrongly applied multiplier of 5 in place of 7 for computing loss of dependency. Another submission made by counsel is that compensation assessed under conventional heads needs enhancement.

Counsel for the insurance company, on the other hand, would urge that the Tribunal has wrongly assessed income of the deceased at Rs.10,000/- per month. It is argued that there is no document produced on record with regard to ownership of land by the deceased. Further submitted that even if the deceased was owner of land, the same is available to his family after his death, therefore, income of the deceased is to be assessed on the basis of value of his services to look after/manage the land owned by him. Another submission made by counsel is that testimony of Subhash PW-4 with regard to purchase of milk from deceased Gurvinder Singh does not find corroboration from any documentary evidence.

Counsel for the insurance company has further assailed loss of dependency by contending that the Tribunal has wrongly allowed deduction to the extent of 1/4th whereas the same should be 50% as claim has been lodged only by widow of the deceased.

I have heard counsel for the parties, perused the paper-book and the records.

No doubt, the claimant did not produce any document in respect of land owned by the deceased or five acres of land being taken on lease as stated by Harbans Kaur widow of the deceased in para 5 of her affidavit Ex.PW1/A. However, the claimant examined Suresh Kumar, Accountant of M/s Kishan Commission Agent, Shop No.160, New Grain Market, Indri, District Karnal to prove that the deceased had been selling agriculture produce at the commission agency of M/s Kishan Commission Agent and J-Forms produced by claimant Harbans Kaur were issued by the aforesaid concern, sufficient to establish that the deceased had been raising crops and selling the same in market. Statement of Subhash PW-4 a milk vendor would also substantiate plea of the claimant that the deceased was doing the business of sale of milk by keeping 4/5 cows and equal number of buffalos. Harbans Kaur has categorically deposed that after death of her husband, she is not doing the business of sale of milk. In the given circumstances, I do not find any reason to interfere in the assessment of income made by the Tribunal and accordingly findings of the Tribunal assessing income of the deceased at Rs.10,000/- per month are affirmed.

The Tribunal has applied cut of 1/4th for personal and living expenses of the deceased. Application for compensation has been filed by Smt. Harbans Kaur, widow of the deceased. In the given circumstances, admissible deduction would be 1/3rd. In this context, reference can be made to judgment of Madhya Pradesh High Court **Anurag Jain and others Vs. Ramveer Singh and others, 2007(4) TAC 279** and of Karnataka High Court **Ningappa Ramanna Kori and another Vs. Tamil Nadu State Transport (Madurai) Ltd., 2016 AAC 1629.** Reference can also be made to judgment of this Court **Pawan Kumar and others Vs. Ramesh Kumar and others, 2016(1) Law Herald 758.**

The Tribunal has held that the deceased was 65 years old at the time of death. In the light of enunciation laid down by the Apex Court in. **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77,** multiplier of 7 is to be applied. In this manner, loss of dependency comes to Rs.5,60,000/-[Rs.8,40,000/- (Rs.10000 x 12 x 7) – Rs.2,80,000/- (1/3rd deduction towards personal expenses)].

Under conventional heads, an amount of Rs.30,000/- awarded by the Tribunal for expenses on funeral/transportation is affirmed. The claimant shall be entitled to an amount of Rs.1,00,000/- for loss of consortium and another sum of Rs.25,000/- for loss of estate.

In view of the above, total compensation comes to Rs.7,15,000/- and the enhanced compensation is Rs.2,00,000/- (Rs.7,15,000/- - Rs.5,15,000 /-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to the claimant.

The appeals are disposed of in the aforesaid terms.

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

Whether speaking/reasoned : yes/no

Whether reportable : yes/no