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

**FAO No. 1191 of 2010(O&M)**

**Date of decision: 20.3.2018**

Rekha and others .....Appellants

VERSUS

Sileti Singh and others .....Respondents

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**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Vikas Lochab, Advocate for the appellants.

Mr. Suvir Dewan, Advocate for the respondents.

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**REKHA MITTAL, J. (Oral)**

**CM No.6016-CII of 2010**

Reply to the application on behalf of respondent No.3 filed in the Court is taken on record.

Heard.

In view of averments made in the application supported by an affidavit of Smt. Rekha, widow of the deceased coupled with legislative intent behind the provisions dealing with grant of compensation to the victim, application is allowed. Delay of 124 days in filing the appeal stands condoned subject, however, to the condition in case compensation is enhanced, claimants shall not be entitled to interest for the period of delay.

Disposed of accordingly.

**FAO No.1191 of 2010**

The claimants are in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Gurgaon (in short 'the Tribunal') on account of death of Ajay Sharma @ Manju Sharma in a motor vehicular accident that took place on 02.05.2007.

The Tribunal has assessed compensation to the tune of Rs.,7,78,000/- detailed hereunder:-

| | |
|---|---|
| Monthly income of the deceased | Rs.6000/- |
| Deduction for personal expenses | 1/3rd |
| Multiplier | 16 |
| Loss of dependency | Rs.7,68,000/- |
| Funeral, transportation, loss of estate and consortium etc. | Rs.10000/- |

Counsel for the appellants would argue that claimants examined R.K. Mina, Senior Tax Assistant, Income Tax Office, Gurgaon to prove income tax return filed by the deceased for the financial year 2005-06 and assessment year 2006-07 Ex.P7 wherein gross income of the deceased is Rs.1,75,700/-. It is further argued that on a detailed consideration of the statement of R.K. Mina PW-6 and income tax return Ex.P7, the Tribunal in para 19 of the award has held that income tax return Ex.P7 can well be taken into consideration for assessing loss of dependency. However, suddenly the Tribunal took a complete turn and assessed income of the deceased at Rs.6,000/- per month i.e. Rs.200 per day and accordingly computed loss of dependency. It is argued with vehemence that in view of oral and documentary evidence with regard to income of the deceased produced before the Tribunal, his income may be assessed on the basis of income tax return Ex.P7 proved by R.K. Mina PW-6. Claimants are entitled to increase in income for future prospects at the rate of 40%. Deduction for personal expenses should be 1/5th as the deceased left behind his widow, five minor children and mother. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the other hand, has supported assessment made by the Tribunal with the plea that compensation under conventional heads may be allowed in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.**

Perusal of the award particularly paras 17 to 19 makes it evident that the Tribunal has accepted correctness of the income tax return Ex.P7 and loss of dependency being liable to be assessed on the basis thereof. I see no reason not to rely upon income tax return Ex.P7 for computing loss of dependency. In para 17 of the award, it has been noticed that in the income tax return Ex.P7, gross income of the deceased was Rs.1,75,700/- and his net income was Rs.97,380/- after deducting expenditure. In the given scenario, net income of the deceased at Rs.97,380/- is taken into consideration for computing loss of dependency. Claimants shall be entitled to increase in income for future prospects at the rate of 40% in the light of judgment in **Pranay Sethi and others case** (supra). Admissible deduction for personal expenses would be 1/5th in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77.** Multiplier adopted by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.17,45,050/- [Rs.15,58,080/-

(Rs.97,380/- x 16) + Rs.6,23,232/- (40% towards future prospects) – Rs.4,36,262/- (1/5$^{th}$ deduction towards personal expenses)].

Under conventional heads, claimants shall be entitled to Rs.70,000/- detailed hereunder:-

| | |
|---|---|
| Loss of consortium to the widow | Rs.40,000/- |
| Funeral Expenses | Rs.15,000/- |
| Loss of estate | Rs.15,000/- |

In view of the above, total compensation comes to Rs.18,15,050/- and additional amount is Rs.10,37,050/- (Rs.18,15,050/- - Rs.7,78,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 124 days, payable to the widow and minor children of the deceased in equal proportion. The amount falling to share of the minor children shall be deposited in Fixed Deposit till they attain the age of majority or for a period of three years, whichever is later. Interest accruing on the FDR shall be paid to mother of the minors for meeting expenses on their living and education.

The appeal is partly allowed in the aforesaid terms.

**MARCH 20, 2018** **(REKHA MITTAL)**
'D. Gulati' **JUDGE**
Whether speaking/reasoned : yes/no
Whether reportable : yes/no