IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 6124 of 2010

DATE OF DECISION : 19.02.2018

Smt. Usha Devi

.... APPELLANT

Versus

Parmod Kumar and others

.... RESPONDENTS

(2) FAO No. 453 of 2011

DATE OF DECISION : 19.02.2018

Parmod Kumar and another

.... APPELLANT

Versus

Rajender Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sandeep Kotla, Advocate,
for the appellant (in FAO No. 6124 of 2010) and
for respondent No.4 (in FAO No. 453 of 2011)

Mr. Sushil Bhardwaj, Advocate,
for respondents No.1 and 2 (in FAO No. 6124 of 2010) and
for the appellants (in FAO No. 453 of 2011)

None for the respondent – Insurance Company.

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AVNEESH JHINGAN, J. (Oral)

The present appeals have arisen from the award dated 04.08.2010 passed by the Motor Accident Claims Tribunal, Karnal (for short, `the Tribunal').

2. No one has appeared today on behalf of the respondent – Insurance Company inspite of service.

3. An accident took place on 29.05.2008, which proved fatal for Pawan Kumar, aged 23 years. He was on his bicycle and was on the *kacha* portion of the road while crossing the road. Meanwhile, a truck bearing registration No. PB-65F-0193 (for short, `the offending vehicle') struck against the bicycle. Pawan Kumar fell down on the road and was crushed underneath the truck. FIR No. 169 dated 29.05.2008 was registered at Police Station Sadar Karnal.

4. Two separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act') were filed, one by the widow and the other by parents and brother of the deceased.

5. The Tribunal, while awarding ₹ 5,81,600/- along with interest at the rate of 7.5% per annum, considered that the accident occurred due to rash and negligent driving of the offending vehicle. While considering the age of the deceased and the dependents survived by him, multiplier of 18 was applied and 1/3rd deduction for self expenses was made. The amount awarded included a sum of ₹ 20,000/- under the conventional heads.

6. The widow and parents of the deceased have filed these appeals for enhancement of compensation. The widow is further aggrieved of the ratio, in which the compensation has been apportioned by the Tribunal.

7. Learned counsel for the appellants in both the appeals argued that no future prospects have been added and the amounts awarded under

the conventional heads are on lower side.

8. Learned counsel for widow of the deceased argued that the Tribunal erred in apportioning the compensation in the ratio of 1 : 3. Just 1/3rd of the awarded amount has been awarded to the widow, who lost her husband at the young age of early twenties.

9. Learned counsel for the parents defended the apportionment and argued that the widow has re-married and hence, the Tribunal has rightly apportioned the compensation.

10. The contentions raised by learned counsel for the appellants for enhancement of compensation deserve acceptance. Having due regard to the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (6) Recent Apex Judgments 143*** and ***Hem Raj Vs. Oriental Insurance Company Ltd.***, (Civil Appeal No. 19603 of 2017, decided on 22.11.2017), 40% future prospects are to be added. These future prospects are to be added even in cases where the monthly income of the deceased is assessed relying upon the minimum wages prevalent at the time of the accident. Further, the appellants would be entitled to a sum of ₹ 70,000/- under the conventional heads, i.e. ₹ 15,000/- for funeral expenses, ₹ 15,000/- for loss of estate and ₹ 40,000/- for loss of consortium.

11. Since loss of dependency calculated as ₹ 5,61,600/- has not been disputed, 40% of the said amount, i.e. ₹ 2,24,640/- is awarded towards future prospects. The amount of ₹ 20,000/- awarded under the conventioinal heads is enhanced to ₹ 70,000/-.

12. The award dated 04.08.2010 is modified to the extent that the amount of ₹ 5,61,600/-awarded by the Tribunal is enhanced by ₹ 2,74,640/-.

13. In the present appeals, there is dispute between widow and parents of the deceased regarding apportionment of the compensation amount. The parents have lost a young son. On the other hand, the widow who was a young girl lost her husband who was aged 23 years. It is not disputed that she has re-married but that is not the end of her suffering. It is very difficult to balance the trauma and suffering of a widow and a mother. In the facts and circumstances of the case, it is deemed appropriate that the amount already awarded and the enhanced amount is apportioned in the ratio of 50 : 50 between widow and parents of the deceased.

14. The appellants would be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation of the amount.

15.. It is, however, clarified that there is an interim stay in this case, by which the amount to be disbursed to the parents of the deceased was kept in a Nationalised Bank. The parents would be entitled to the interest, which has accrued on the said amount, during the pendency of the appeal. The interest on the balance amount would be apportioned between widow and parents in the ratio of 50 : 50.

16. The appeals are disposed of in the aforesaid terms.

February 19, 2018 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned Yes

Whether Reportable Yes