IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 26.2.2018

1. **FAO No.67 of 2012(O&M)**

Ved Parkash …..Appellant

VERSUS

Gurtej Singh and others .....Respondents

Present: Mr. D.K. Singal, Advocate for the appellant.

Mr. Sukhdarshan Singh, Advocate for respondent No.3.

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2. **FAO No.4450 of 2014(O&M)**

Motia Rani and others …..Appellants

VERSUS

Gurbhej Singh and others .....Respondents

Present: Mr. R.D. Sharma, Advocate for the appellants.

Mr. Sukhdarshan Singh, Advocate for respondent No.3.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.67 of 2012 and 4450 of 2014 as these have emerged out of the same award dated 12.11.2010 passed by the Motor Accidents claims Tribunal, Gurdaspur (in short 'the Tribunal') whereby compensation has been awarded in respect of injuries sustained by Ved Parkash and death of Dev Raj Bhatia in a motor vehicular accident that took place on 11.09.2006 due to rash and negligent driving of truck bearing No.HR-38F-3015 by Gurtej Singh (its driver).

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FAO No.67 of 2012 has been filed by Ved Parkash – injured seeking enhancement of compensation whereas FAO No.4450 of 2014 has been filed by Motia Rani and others for enhancement of compensation qua death of Dev Raj Bhatia.

FAO No.67 of 2012

The Tribunal has awarded compensation of Rs.14,44,800/- detailed hereunder:-

Medical expenses	Rs.6,24,800/-
Compensation qua permanent disability	Rs.1,00,000/-
Pain and sufferings	Rs.20,000/-
Loss of income on account of disability	Rs.7,00,000/-

Counsel for the claimant would urge that prior to the occurrence, injured was running a grocery and sweet shop at Mukerian. He was holding agency of Lovely Sweets for supply of Lovely Sweets in the entire area of Mukerian. He filed income tax returns marked as Exs.C210 and C211 showing his income at Rs.92,668/- in Ex.C210 and Rs.1,02,000/- in C211. Due to sustaining of injuries, he has been rendered permanently disabled to the extent of 100% even though his disability has been assessed at 80%. As the injured has been rendered bed-ridden and virtually leading a life absolutely dependent upon others for his day-to-day care what to talk of looking after his business and making living for the family, compensation qua disability is liable to be assessed by applying multiplier method on the basis of income of the victim shown in the income tax return Ex.C211. It is further argued that compensation awarded by the

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Tribunal for pain and sufferings is liable to be enhanced. Claimant is also entitled to compensation for loss of amenities of life, services of an attendant throughout his life, special diet and transportation etc.

Counsel representing the insurance company has supported assessment made by the Tribunal with the plea that adequate compensation has been awarded.

The Tribunal has awarded an amount of Rs.6,24,800/- qua medical expenses though the claimant proved on record bills Ex.C1 to C207 of the value of Rs.6,24,845.78. The claimant shall be entitled to an amount of Rs.6,25,000/- towards expenses on medical treatment.

The injured was 40 years of age at the time of occurrence. There is no dispute that prior to the accident, he was running a grocery and sweet shop at Mukerian. The claimant has produced income tax returns Ex.C210 and C211 wherein income of the claimant has been reflected as Rs.92,668/- and Rs.1,02,000/- respectively. Claimant has suffered disability of permanent nature to the extent of 80%.

Dr. Tarsem Singh, M.S. Orthopedic, Medical Officer, Civil Hospital, Pathankot AW-1 was examined to prove disability suffered by the injured. A relevant extract from para 32 of the award reads as follows:-

> "32…The patient was suffering from traumatic quadriplegic. The patient was old case of this disease I assess the disability of the patient to 80% which was permanently (sic) nature. The upper and the lower limbs of the patient was totally dead. The patient is not able to do any work. The patient can move on the wheel chair with the help of person. I have seen the original disability certificate and the same is Ex.AW.1/A."

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Anita Kumari AW-4, wife of the injured appeared in the witness box and deposed that her husband sustained grievous injuries in the accident and since then he is lying on bed. He is unable to do his daily work. Before the accident, he was running a grocery and sweet shop at Mukerian. The business has been closed down as her husband is bed ridden.

Taking a cumulative view of the testimony of Dr. Tarsem Singh AW-1 and Anita Kumari AW-4, it can be safely held that the claimant has been rendered 100% disable so far as loss of business income is concerned. Under the circumstances, income of the claimant reflected in the income tax return Ex.C210 filed before the accident, shall form the basis for assessing loss of future income on account of disability. The claimant shall be entitled to increase in income for future prospects at the rate of 40% as he was 40 years old at the time of accident. A multiplier of 15 is required to be applied on the basis of age of the injured. The Tribunal has wrongly deducted 1/3rd towards personal expenses of the victim despite his being still alive. In this manner, loss of future income qua disability comes to Rs.19,46,028/- [Rs.13,90,020/- (Rs.92,668/- x 15) + Rs.5,56,008/- (40% towards future prospects)], inclusive of Rs.1,00,000/- allowed for disability by the Tribunal.

The victim remained hospitalized for a period of one month. He sustained multiple serious injuries on various parts of his body which rendered him disable to the extent of 80% as per the disability certificate. Claimant shall be entitled to an amount of Rs.50,000/- towards pain and

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sufferings. Another sum of Rs.1,50,000/- is awarded for loss of amenities of life on account of bed-ridden life till he remains alive.

As the injured cannot move without assistance of a helper and has been switched to the wheel-chair because of traumatic quadriplegic, claimant is entitled to value of services of an attendant at the rate of Rs.2,000/- per month for a period of 15 years and the same comes to Rs.3,60,000/- (Rs.2000/- x 12 x 15). Claimant is awarded a consolidated sum of Rs.25,000/- for transportation and special diet etc.

In view of the above, total compensation is Rs.33,56,028/- and additional amount is Rs.19,11,228/- (Rs.33,56,028/- - Rs.14,44,800/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization. The additional amount shall be invested in Fixed Deposit except an amount of Rs.1,00,000/- to be paid forthwith. Interest accruing on the FDR shall be payable to the injured victim who shall further be entitled to withdraw an amount of Rs.1,00,000/- each year.

The appeal is partly allowed in the aforesaid terms.

FAO No.4450 of 2014

The Tribunal has awarded compensation of Rs.6,76,800/- detailed herein:-

Monthly income of the deceased	Rs.7,000/-
Deduction for personal expenses	1/3rd
Multiplier	12
Loss of dependency	Rs.6,76,800/-

Counsel for the claimants would urge that entire income of Rs.7,075/- is liable to be taken into account for computing loss of dependency. Claimants are entitled to increase in income for future

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prospects at the rate of 15% as the deceased was working as Clerk with Punjab Roadways, Batala on a salary of Rs.7,075/-. Adequate compensation may be allowed under conventional heads. Appropriate multiplier may be applied.

Counsel representing the insurance company has supported the award.

The claimant examined Pardeep Kumar, Clerk from the office of Punjab Roadways Pathankot to prove employment and salary of the deceased at Rs.7,075/-. The Tribunal has not assigned any reason to assess income of the deceased at Rs.7,000/- per month. The entire income is to be taken into account for computing loss of dependency. Claimant shall be entitled to increase in income for future prospects at the rate of 15% as the deceased was working in Punjab Roadways Batala and was in the age bracket of 51-55 years. The multiplier adopted by the Tribunal is modified and multiplier of 11 is allowed, admissible for the age group of 51-55 years 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.** In this manner, loss of dependency comes to Rs.7,15,990/- [Rs.9,33,900/- (Rs.7,075/- x 12 x 11) + Rs.1,40,085/- (15% towards future prospects) – Rs. 3,57,995/- (1/3rd deduction towards personal expenses)].

The claimants shall be entitled to Rs.70,000/- under conventional heads in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270** :-

Loss of consortium to the widow Rs.40,000/-

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Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.7,85,990/- and the additional amount is Rs.1,09,190/- (Rs.7,85,990/- - Rs.6,76,800/-).

Perusal of the award would reveal that interest at the rate of 9% per annum has been awarded only in case the awarded amount is not paid to the claimant within a period of three months from the date of award. The Tribunal has not assigned any reason to deprive payment of pendente lite interest to the claimants by giving concession to the respondents to escape liability to pay interest by paying the awarded amount within three months. Claimants cannot be denied interest unless there are special reasons recorded in this regard. Hence, claimants shall be entitled to interest at the rate of 7.5% per annum from the date of petition till realization on the entire amount of Rs.7,85,990/- assessed by this Court except for the period of delay of 1154 days.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FEBRUARY 26, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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

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