IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.973 of 2012(O&M)

Date of decision: 27.4.2018

Harpreet Arora and others …..Appellants

VERSUS

Sukhmander Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. K.S. Boparai, Advocate for the appellants.

Mr. Subhash Goyal, Advocate for respondent-Insurance Co.

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REKHA MITTAL, J.

The claimants are in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal') on account of death of Daljeet Singh Arora in a motor vehicular accident that took place on 29.08.2008.

The Tribunal has awarded compensation of Rs.28,52,600/- detailed hereunder:-

Annual income of the deceased	Rs.2,91,600/-
Deduction for personal expenses	1/4th
Multiplier	13
Loss of dependency	Rs.28,43,100/-
Funeral expenses	Rs.2000/-
Loss of consortium	Rs.5,000/-
Loss to estate	Rs.2,500/-

Counsel for the claimants would urge that income of the deceased assessed by the Tribunal at the rate of Rs.26,386/- per month and Rs.2,91,600/- per annum after deducting income tax is not in consonance with the documents Ex.P1 issued by Venus Remedies Ltd and details of salary reflected in the statement of account maintained by the deceased in State Bank of India Ex.P2. Claimants are entitled to benefit of future prospects at the rate of 30% as the deceased was confirmed by the aforesaid concern before his death. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported assessment of income with the plea that there is nothing in the testimony of Satinder Sharma PW-3 examined by the claimant to prove avocation and income of the deceased that the deceased was paid something more than salary shown in the documents Ex.P1 and Ex.CW3/3. Further argued that the deceased joined service of Venus Remedies Ltd in July 2007, therefore, claimants cannot be heard to say that he was in permanent job of the aforesaid concern.

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

As per plea of the claimants, the deceased was working with Venus Remedies Ltd, Panchkula. Satinder Sharma, Deputy Manager (HRM) of the aforesaid concern was examined and marked documents i.e. appointment letter Ex.CW3/1, joining report Ex.CW3/2, confirmation letter Ex.CW3/3. Widow of the deceased appeared in the witness box and produced on record salary certificate Ex.P1. Perusal of the documents produced by Satinder Sharma PW-3 and salary certificate Ex.P1, at best, proves that total salary of the deceased was Rs.32,700/- per month which was initially fixed at the rate of Rs.31,500/- as per letter of appointment dated 26.07.2007. Counsel for the appellants sought to rely upon the statement of account maintained in State Bank of India with regard to credit entries pertaining to 08.10.2007 (Rs.48,579/-), 07.11.2007 (Rs.41,586/-), 07.12.2007 (Rs.52,475/-), 08.01.2008 (Rs.55,792/-), 07.02.2008 (Rs.24,900/-), 07.03.2008 (Rs.52,556/-), 08.04.2008 (Rs.57,106/-), 07.05.2008 (Rs.32,720/-), 07.06.2008 (Rs.34,607/-), 07.08.2008 (Rs.34,620/-).

In the credit entries dated 08.10.2007, 07.12.2007 and 07.03.2008, there is no reference as to on what basis this money has been credited in the account of Daljeet Singh Arora. In the entry dated 07.11.2007, there is reference to Venus qua credit of Rs.41,586/-, in entry dated 08.01.2008, 07.02.2008, 07.05.2008 and 07.06.2008 there is reference to Centex DEP. In one of the entries dated 08.04.2008, there is reference to Centex DEP Venus Salary Field F. There is nothing on record suggestive of the fact as to what does Centex DEP refers to and further as to how Centex DEP has something to do with Venus Remedies Ltd. In absence of any materials being brought on record in the testimony of Satinder Sharma PW-3 that the deceased was being paid some more money beyond his salary shown in the appointment letter Ex.CW3/1 and confirmation letter Ex.CW3/3, I find it difficult to accept contention of the claimants that income of the deceased is liable to be assessed on the basis of entries in the statement of account Ex.P2. This apart, one of the entries dated 07.02.2008 shows credit of Rs.24,900/- which is far below salary of the deceased reflected in the appointment letter and confirmation letter, discussed hereinbefore . As the claimants have failed to adduce clear, cogent and convincing evidence with regard to basis of credit entries reflecting credit of more than Rs.32,700/- per month, I find it difficult to accept contention of the claimants that they are entitled to benefit of these credit entries to prove income of the deceased from Venus Remedies Ltd. The Tribunal has deducted certain allowances from salary of the deceased. The allowances paid to the deceased would also be benefit available to family of the deceased, therefore, not amenable to deduction. In this context, reference can be made to judgments of Hon'ble the Supreme Court **Manasvi Jain versus Delhi Transport Corporation, (2014) 13 SCC 22** and **Shyamwati Sharma and others v. Karam Singh and others, (2010) 12 SCC 378.**

Taking into consideration salary of the deceased at Rs.32,700/- per month and Rs.3,92,400/- per annum and after deducting liability to pay income tax to the tune of Rs.33,480/-, annual income for loss of dependency is calculated at Rs.3,58,920/-. The deceased was appointed by Venus Remedies Ltd in July 2007. The letter of appointment makes a specific reference that he would be on probation for a period of one year which can be extended further. Though Satinder Sharma PW-3 has produced on record confirmation letter Ex.CW3/3 but his statement is conspicuously silent that the deceased had been a regular/permanent employee with M/s Venus Remedies Ltd. The deceased was 46 years old at the time of occurrence. Claimants shall be entitled to benefit of future prospects at the rate of 25%. The multiplier and deduction for personal expenses allowed by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.43,74,338/- [Rs.46,65,960/- (Rs.3,58,920/- x 13)

+ Rs.11,66,490/- (25% towards future prospects) – Rs.14,58,112/- (1/4th 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.44,44,338/- and additional amount is Rs.15,91,738/- (Rs.44,44,338/- - Rs.28,52,600/-), payable with interest at the rate of 7.5% per annum from the date of petition till realization, to be apportioned in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

APRIL 27, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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