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

217 **XOBJ-169-CII-2014 in/and
FAO-2053-2014 (O&M)**

Date of Decision:16.01.2018

Shri Ram General Insurance
Company Limited ….Appellant

Versus

Smt. Sukh Devi and others
.....Respondents

<u>CORAM</u>: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. Arun Sharma, Advocate for
Mr. Tejender K. Joshi, Advocate,
for the appellant.**

**Mr. Ram Bilas Gupta, Advocate,
for respondent Nos.1 to 9/cross-objectors.**

**Mr. Rajesh Bansal, Advocate,
for respondent Nos.10 and 11.**

****

<u>HARI PAL VERMA, J.(Oral)</u>

<u>CM-7388-CII-2014</u>

Prayer in the instant application filed under Section 5 of the Limitation Act is for condonation of delay of 194 days filing the present appeal.

For the reasons stated in the application, same is allowed and delay of 194 days in filing the appeal is condoned.

<u>CM-7387-CII-2014</u>

Prayer in the present application filed under section 151 CPC is for condonation of delay of 221 days in re-filing the appeal.

For the reasons stated in the application, same is allowed and delay of 221 days in re-filing the appeal is condoned.

MAIN CASE

Appellant-Insurance Company has filed the present appeal impugning the award dated 15.10.2012 passed by learned Motor Accidents Claims Tribunal, Faridabad (for short 'the Tribunal'), whereby claim-petition filed by the respondents-claimants was allowed and an amount of ₹4,21,112/- was awarded as compensation to the claimants on account of death of Dalbir Singh, deceased in the motor vehicular accident, which took place on 17.11.2011.

Briefly stated that on 17.11.2011, when Dalbir Singh (since deceased) was going on his bicycle and had reached near Aggarwal Dhaba, Friends Dharamkanta, Sohna-Ballabgarh Road, Faridabad, he was hit by the offending vehicle i.e. Crane bearing registration No.HR-74-4979, which came from the back side. The said vehicle was being driven in a rash and negligent manner by the driver and the accident was witnessed by Nand Lal, brother-in-law of the deceased. As a result of the accident, Dalbir Singh died at the spot as he was crushed by the Crane.

Learned counsel for the appellant has argued that the award passed by the Tribunal is on higher side and even the driver of the offending vehicle was not holding a valid license. He further argued that as the claimant Nos.2, 3, 4 and 6 i.e. Pushpa, Anita, Saroj and Manju, aged about 35, 33, 31 and 27 years, respectively, are married and are settled in their matrimonial houses, therefore, they were no more dependent on the deceased. Similarly, the other claimant Nos.5 and 7 i.e. Ram Singh and

Devender, aged about 28 and 25 years are also married and were not dependent on the deceased. The other claimant Nos.8 and 9, namely, Raju and Raj Kumar, are aged about 21 and 19 years respectively. Therefore, they being major cannot be said to be dependent on the deceased. The claimants have failed to establish any evidence regarding source of income of the deceased. He has further argued that the driving license of the driver of the offending vehicle was for LMV/HMV and therefore, a special endorsement was required on the license as the driver was driving a Crane.

Learned counsel for the respondents-claimants does not dispute the fact that claimant Nos.2 to 7 i.e. Pushpa, Anita, Saroj, Ram Singh, Manju and Devender are married, but he has argued that in view of the law laid down by the Hon'ble Apex Court in case **Santosh Devi Versus National Insurance Company Limited and others, 2012(2) R.C.R. (Civil) 882,** even the major sons of the deceased are entitled for compensation. He has also referred a judgment of the Hon'ble Apex Court in **Smt. Manjuri Bera Versus The Oriental Insurance Company Limited and another, 2007(2) R.C.R. (Civil) 674,** to contend that a married daughter is also entitled to compensation under Section 140 of the Motor Vehicles Act though she was not dependent on her deceased father. He submits that as no amount towards the future prospects has been awarded by the Tribunal, the award should be rather suitably modified.

I have heard learned counsel for the parties.

As regards grant of compensation to respondents No.2 to 7 i.e. Pushpa, Anita, Saroj, Ram Singh, Manju and Devender is concerned, they are married and are between the age group of 25 to 35 years and must be having children, therefore, they cannot be said to be dependent upon the deceased. Raju and Raj Kumar, respondents No.8 and 9 are aged about 21 and 19 years respectively. Since the insurance company has not been able to prove that they had any other independent source of income, this Court finds that they were dependents on the deceased-Dalbir Singh. Thus, respondent-claimants Sukh Devi, Raju and Raj Kumar are entitled to claim compensation on account of death of deceased-Dalbir Singh.

So far as the judgments cited by learned counsel for the respondents-claimants in **Santosh Devi and Smt. Manjuri Bera's cases (supra)**, are concerned, the same are not attracted in the facts and circumstances of the present case. In **Smt. Manjuri Bera's case (supra)**, the compensation was awarded to the claimant under Section 140 of the Motor Vehicles Act (for short "the Act"), whereas the present claim-petition was filed under Section 166 of the Act.

The Tribunal has deducted 1/5th of amount towards the personal expenses of the deceased, taking into consideration the nine claimants, but as the respondent-claimant Nos.2 to 7 are not entitled for any compensation, the deduction on this account requires modification. Though, the deceased had left three dependents, but taking into consideration that the salary of deceased has been assessed by the Tribunal to be equivalent to the salary of an unskilled worker i.e. ₹4,643/- per month, this Court deems it appropriate to deduct 1/4th amount towards the personal expenses of the deceased, as a person with such like wages would not spend much on his own expenses and would like to contribute to the family at the maximum.

In regard to future prospects, this court finds that in view of the judgment of Hon'ble Apex Court in **<u>National Insurance Company Limited Versus Pranay Sethi and others</u>, 2017(4) RCR (Civil) 1009**, deceased being 60 years is entitled for 10% increase towards future prospects. Similarly, the amount of ₹20,000/- awarded under the conventional heads also requires modification.

Accordingly, the award passed by the tribunal is modified and the compensation to respondent No.1, 8 and 9 i.e. Smt. Sukh Devi, Raju and Raj Kumar is awarded in the following manner:-

Monthly Income	:	₹4,643/- per month
Future prospects (10%).	:	₹464/- per month
Total	:	₹5,107/- per month
Annual Income	:	5107x12= ₹61,284/-
Annual dependency (1/4th deduction)	:	₹45,963/-
Total loss of dependency	:	45963x9=₹4,13,667/-
Funeral expenses	:	₹15,000/-
Loss of Estate	:	₹15,000/-
Consortium	:	₹40,000/-
Total	:	**₹4,83,667**/-

The enhanced amount of compensation shall fetch interest @ 7.5% per annum from the date of filing of claim petition till realization.

With the aforesaid modification in the award, the present appeal as well as cross-objections stand disposed of.

The amount of ₹40,000/- under the head Consortium shall be paid to widow of deceased-Smt. Sukh Devi. Out of the remaining amount of ₹4,43,667/- respondent No.1-Smt. Sukh Devi shall be entitled for ₹3,43,667/- out of which ₹3,00,000/- shall be deposited in any nationalized bank by way of fixed deposit fetching maximum interest for a period of two years and the remaining amount shall be disbursed to her. Respondents No.8 and 9 i.e. Raju and Raj Kumar shall be entitled for ₹50,000/- each and same be disbursed to them.

Since the main appeal has been disposed of, pending miscellaneous applications, if any, shall also stand disposed of accordingly.

January 16, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No