IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision:14.5.2018

1. **FAO No.1050 of 2016(O&M)**

Royal Sundaram Alliance Insurance Co. Ltd. …..Appellant

VERSUS

Vineet and others .....Respondents

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

Mr. K.S. Malik, Advocate for respondents No.1 to 6.

Mr. A.K. Kansal, Advocate for
Mr. Amardeep Hooda, Advocate for respondent No.8.

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2. **FAO No.564 of 2017(O&M)**

Vineet and others …..Appellants

VERSUS

Naveen and others .....Respondents

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

Mr. A.K. Kansal, Advocate for
Mr. Amardeep Hooda, Advocate for respondent No.2.

Mr. D.K. Parjapati, Advocate for respondent No.3.

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CORAM: HON’BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.1050 of 2016 and 564 of 2017 as these have emanated from the same award dated 02.11.2015 passed by the Motor Accidents Claims Tribunal, Rohtak (in short 'the Tribunal') whereby compensation has been assessed on account of death of Balwan Singh in a motor vehicular accident that took place on 30.08.2014.

FAO No.1050 of 2016 has been filed by the Royal Sundaram Alliance Insurance Co. Ltd. to assail quantum of compensation assessed by the Tribunal whereas FAO No.564 of 2017 has been filed by the claimants seeking enhancement of compensation.

The Tribunal has awarded compensation of Rs.9,71,280/- detailed hereunder:-

Monthly loss of dependency	Rs.10,670/-
Multiplier	7
Loss of dependency	Rs.8,96,280/-
Loss of love and affection	Rs,50,000/-
Funeral Expenses	Rs.25,000/-

The sole submission made by counsel for the insurance company is that as the application for compensation has been filed by well-settled married sons along with their children (grandsons) of Balwan Singh, they are not entitled to compensation qua loss of dependency as has been assessed by the Tribunal. At best, they can be awarded compensation of Rs.50,000/- under No Fault Liability in view of Section 140 of the Motor Vehicles Act, 1988 (in short 'the Act'). In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and another 2007(2) RCR (Civil) 674**. Further reference has been made to Division Bench judgment of Chhattisgarh High Court **Amoliram and others Vs. Siyaram and others, 2012 (32) RCR (Civil) 297** and judgments of this Court **Kashmir Kumar and others Vs. Mohan Singh and others, 2013(33) RCR (Civil) 197, Bijender and another Vs. Ranbir Singh and others, FAO No.1628 of 2013 decided on 19.09.2017.**

Counsel representing the claimants, on the other hand, has supported assessment made by the Tribunal on the premise that legal representatives of deceased can maintain the petition for grant of compensation. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai and Prabhatbhai and another, AIR 1987 (SC) 1690.** Another submission made by counsel is that even if sons of the deceased are married having their own family, it cannot be construed that they were not being provided with financial assistance by their father who was a pensioner. According to counsel, in a case where the claimants may not be effectively dependent upon income of the deceased they are entitled to get substantial amount of compensation under the head loss to estate. As the Tribunal has already deducted 50% towards personal expenses of the deceased, compensation qua loss of dependency assessed by the Tribunal can be appropriated towards loss to estate. For this purpose, he has relied upon judgments of this Court **Miss Nandini Minor and others Vs. Amrik Singh and others, FAO No.450 of 1994, decided on 27.01.2011** and **Jai Singh Vs. Mahesh Kumar, FAO No.3582 of 2013, decided on 27.08.2016.**

I have heard counsel for the parties, perused the paper-book particularly the award.

Hon'ble the Supreme Court in **Gujarat State Road Transport Corporation's case** (supra) has held that the view taken by Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to conditions of the Indian society. Every legal representative who suffers on account of death of a person due to motor vehicle accident has a remedy for realization of compensation that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act. Further held that we should remember that in Indian family brothers, sisters and brother's children and sometime foster children live together and they are dependent upon bread-winner of the family and if the bread-winner is killed on account of motor vehicular accident, there is no justification to deny them compensation relying upon principles of the Fatal Accidents Act, 1855.

In **Smt. Manjuri Bera's case** (supra) application for compensation was filed by a married daughter of Bata Krishna Mondal (since deceased). The Apex Court in para 15 has held that where a legal representative who is not dependent files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is not a legal representative will be entitled to compensation, the quantum of which shall not be less than liability flowing from Section 140 of the Act. In the referred judgment, it has not been held by the Court that quantum of compensation in circumstances obtaining in referred authority cannot be more than amount available under No Fault Liability. The Division Bench of Chhattisgarh High Court in **Amoliram and others case** (supra) awarded Rs.50,000/- in appeal filed by the claimants who were awarded a sum of Rs.22,000/- by the Tribunal qua death of Smt. Hirawati Sahu and the claimants in the said case were married daughters and major son of deceased Smt. Hirawati. In **Kashmir Kumar and others case** (supra), claimants, two sons and one daughter of deceased who were major and married were allowed compensation of Rs.1,50,000/- qua death of their mother Satya Devi. In **Ms. Nandini Minor and others case** (supra), this Court has held in para 2, reads thus:-

> "2.The case of negligence was taken as established, but the Tribunal still granted a compensation of only Rs.25,000/- on no-fault basis on the ground that all the sons were majors and there were no dependence on the deceased. The element of dependence is but one facet of claim before the Tribunal. There were several heads of claims which are provided for under the Motor Vehicles Acts. Loss to estate and funeral expenses also constitute important heads of claim. While loss to estate may itself be merely as token or conventional figure when the compensation is determined taking the dependence factor, it assumes significance in a case where no dependency is established. The legal heirs come by the benefit of accretions to the estate if he/she had lived. The deceased was aged 56 years at the time of his death and his salary had been Rs.6708/- and he was also assessed to income tax at Rs.300/- per month. I would take the salary to be Rs.6500/- and having regard to his age and status with all the amenities to a high ranking Police Official that was possible, I would take the accretions to the estate at not less than 50% of his earning. I would, therefore, take 50% gross income minus tax as going to the estate and having regard to the fact that he was aged 56, I will adopt a multiplier of 9 and hold the extent of loss of estate as Rs.3,45,600/-."

In **Jai Singh's case** (supra), this Court assessed loss to estate by computing monthly loss at the rate of Rs.1000/- out of Rs.3000/- per month assessed as income of the deceased and applied multiplier method to compute loss to estate to the tune of Rs.84,000/- which was held to be payable to son of the deceased aged about 42 years. As has been rightly argued by counsel for the claimants that even if sons of the deceased are married having their families and working and earning livelihood for themselves and their families, they cannot be denied compensation qua loss to estate by applying multiplier method. In the case at hand, deceased was a pensioner drawing Rs.21,340/- per month. His wife had already passed away. He was residing with his sons and grandchildren. The Tribunal has assessed financial loss to the claimants at the rate of 50% of his income i.e. Rs.10,670/- per month. I do not find any reason to differ with assessment of compensation to the tune of Rs.8,96,280/- to be appropriated towards loss of estate. However, compensation awarded by the Tribunal under conventional heads is modified to the effect that claimants shall be entitled to Rs.15,000/- towards funeral expenses.

Total compensation is Rs.9,11,280/- (Rs.8,96,280/- + Rs.15,000/-) and compensation awarded by the Tribunal is reduced to the extent of Rs.60,000/-. The appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal filed by the claimants fails and is accordingly dismissed. No order as to costs.

MAY 14, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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