IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

<u>Date of decision: 16.4.2018</u>

1. **<u>FAO No.4351 of 2014(O&M)</u>**

Jujhar Construction & travels Pvt. Ltd. ….Appellant

VERSUS

Parveen Rani and others .....Respondents

Present: Mr. Yogesh Goel, Advocate for the appellant.

Ms. Vandana Malhotra, Advocate for respondent No.8.

*****

2. **<u>FAO No.6329 of 2014(O&M)</u>**

Jujhar Construction & travels Pvt. Ltd. ….Appellant

VERSUS

Karamwati and others .....Respondents

Present: Mr. Yogesh Goel, Advocate for the appellant.

Ms. Vandana Malhotra, Advocate for respondent No.4.

*****

3. **<u>FAO No.9293 of 2014(O&M)</u>**

Karamwati and another ….Appellants

VERSUS

Jujhar Construction & travels Pvt. Ltd and others .....Respondents

Present: Mr. Ashok Bector, Advocate for the appellants.

Mr. Yogesh Goel, Advocate for respondent No.1.

Ms. Vandana Malhotra, Advocate for respondent No.3.

*****

4. **FAO No.10375 of 2014(O&M)**

Parveen Rani and others ….Appellants

VERSUS

Jujhar Construction & travels Pvt. Ltd and others .....Respondents

Present: Mr. Ashok Bector, Advocate for the appellants.

Mr. Yogesh Goel, Advocate for respondent No.1.

Ms. Vandana Malhotra, Advocate for respondent No.3.

*****

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.(Oral)

This order will dispose of FAO Nos.4351, 6329, 9293 and 10375 of 2014 as these have emerged out of the same accident dated 13.02.2013 in which Anureet Sharma @ Sushma Devi and Hari Krishan died while travelling on motorcycle bearing No.PB12-N-(T)-4265 due to rash and negligent driving of Bus No.PB-10-DC-9937 by Gurwinder Singh, its driver.

FAO No.4351 and 6329 of 2014 have been filed by Jujhar Construction and Travels Pvt. Ltd., registered owner of the offending vehicle whereas FAO No.9293 of 2014 has been filed by parents of deceased Anureet Sharma @ Sushma Devi seeking enhancement of compensation. Similarly FAO No.10375 of 2014 has been filed by claimants Parveen Rani and others with regard to death of Hari Krishan seeking enhancement of compensation.

FAO Nos.4351 and 6329 of 2014

Counsel for the parties are ad idem that findings of the Tribunal on issue No.3 may be set aside and the matter is remitted to the

Tribunal for deciding issue No.3 afresh on the basis of materials available on record and additional evidence to be led by the parties in respect of driving licences marked as Ex.RY and R4.

In view of the above, the appeals are disposed of. Findings of the Tribunal on issue No.3 are set aside and the matter is remitted to the Tribunal for decision of the said issue afresh on the basis of evidence already on record and additional evidence to be adduced by the parties in respect of driving licences marked as Ex.RY and R4.

The parties are directed to appear before the Tribunal on 18.05.2018.

FAO No.9293 of 2014

The Tribunal has awarded compensation of Rs.5,50,000/- detailed hereunder:-

Monthly income of the deceased	Rs.5,000/-
Multiplier	18
Deduction for personal expenses	50%
Loss of dependency	Rs.5,40,000/-
Funeral expenses, loss of love and affection	Rs.10,000/-

Counsel for the appellants would argue that the deceased was a student of 9th class and the Tribunal has assessed her income at Rs.5,000/- per month. Karamwati, mother of the deceased is entitled to benefit of future prospects at the rate of 40% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has refuted contention of counsel for the claimants for extending benefit of future prospects on the premise that income of the deceased has been assessed on notional basis, therefore no addition in the notional income is required.

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

The plea raised by counsel for the insurance company for not extending benefit of future prospects is not meritorious when the case is examined in the light of judgment of this Court **National Insurance Co. Ltd. Vs. Pushpa Singh Chauhan and others, FAO No.1502 of 2015, decided on 20.03.2015** affirmed by Hon'ble the Supreme Court in SLP(C) No.19533 of 2015. Claimant No.1 is entitled to benefit of addition in income for future prospects at the rate of 40% as the deceased was 17 years old. In this manner, loss of dependency comes to Rs.7,56,000/- [Rs.10,80,000/- (Rs.5000/- x 12 x 18) + Rs.4,32,000/- (40% future prospects) – Rs.7,56,000/- (50% deduction towards personal expenses)].

Under conventional heads, the claimant shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and Rs.15,000/- for loss to estate.

In view of the above, total compensation comes to Rs.7,86,000/- and the additional amount is Rs.2,36,000/- (Rs.7,86,000/- - Rs.5,50,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to Karamwati, mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

FAO No.10375 of 2014

The Tribunal has awarded compensation of Rs.14,87,192/- detailed hereunder:-

Monthly income of the deceased (pension)	Rs.12,966/-
Deduction for personal expenses	1/3rd
Multiplier	14
Loss of dependency	Rs.14,52,192/-
Loss of consortium	Rs.30,000/-
Funeral expenses	Rs.5,000/-

Counsel for the claimants would argue that as the application for compensation was filed by the widow, two minor children, one major daughter aged about 18 years and parents of the deceased, admissible deduction for personal expenses should be 1/4th. Claimants are entitled to compensation qua loss of income of the deceased at the rate of Rs.6,000/- per month as the deceased was working as a Security Guard, proved by Anil Kumar Sharma PW-4.

Counsel representing the insurance company would argue that testimony of Anil Kumar Sharma PW-4 cannot form the basis for assessing income of the deceased, post-retirement. In addition, it is argued that as the deceased was an ex-serviceman, his widow would be entitled to family pension, liable to be deducted while computing loss of dependency qua loss of pension.

The claimants examined Bikramjit Singh PW-3 to prove that the deceased was drawing pension at the rate of Rs.12,966/- per month. There is nothing on record suggestive of the fact that any family pension has been paid to widow of the deceased. Counsel for the claimants is right in his submission that in view of number of dependents, admissible deduction for personal expenses would be 1/4th. The multiplier adopted by the Tribunal is affirmed. Accordingly loss of dependency in respect of loss of pension of the deceased comes to Rs.16,33,716/- [Rs.21,78,288/-

(Rs.12966/- x 12 x 14) – Rs.5,44,572/- (1/4th deduction qua personal expenses)]

With regard to post retirement income of the deceased, Anil Kumar Sharma PW-4 has deposed that the deceased was working as a Security Guard with Rudra Enterprises Security & Manpower Services, village Maloya, Chandigarh and he was deputed to work as a Security Guard in Noor City Khanpur. He had brought attendance register and produced salary certificate Ex.P4 signed by him as one of the partners of the aforesaid concern. He has explained that there is no deduction of PF as the deceased was an ex-serviceman. Even otherwise, the deceased was 44 years old ex-serviceman. There is nothing on record suggestive of the fact that the deceased was rendered disable to take up an assignment after retirement from service. Taking into consideration the minimum wage available at the relevant time coupled with testimony of Anil Kumar Sharma PW-4 along with the factum that the deceased was an ex-serviceman, I do not find any reason to discard and disbelieve testimony of PW-4 with regard to income of the deceased at Rs.6,000/- per month. The multiplier and deduction applied for computing loss of dependency qua pension would be available for computing loss of income post retirement. As the deceased was less than 50 years of age, claimants shall be entitled to addition in income for future prospects at the rate of 25%. In this manner, loss of dependency qua post retirement income of the deceased comes to Rs.9,45,000/- [Rs.10,08,000/- (Rs.6000 x 12 x 14) + Rs.2,52,000/- (25% future prospects) – Rs.3,15,000/- (1/4th deduction towards personal expenses)]. Total loss of dependency comes to Rs.25,78,716/- (Rs.16,33,716/- + Rs.9,45,000/-).

Under conventional heads, claimants shall be entitled to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **Pranay Sethi and others case** (supra)**:**-

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.26,48,716/- and the additional amount is Rs.11,61,524/- (Rs.26,48,716/- - Rs.14,87,192/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization. The additional amount shall be shared by the widow and children of the deceased in the ratio 70:10:10:10. The amount falling to share of the minors shall be invested in Fixed Deposits payable on their attaining majority or for a period of three years, whichever is later. Interest accruing on the FDRs shall be paid to mother of the minors for meeting expenses on their living and education.

The appeal is partly allowed in the aforesaid terms.

The insurance company shall be liable to pay the additional amount in both the appeals but subject to outcome of decision on issue No.3 by the Tribunal.

APRIL 16, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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