IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.5359 of 2013(O&M)
Date of Decision:07.02.2018

Tara Devi and another

...Appellants

Versus

Manoj and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Surender Deswal, Advocate for the appellants.
Mr.S.S.Nain, Advocate for
Mr.R.N.Lohan, Advocate for respondents No.1 and 2.
Mr.Arun Sharma, Advocate for
Mr.T.K.Joshi, Advocate for respondent No.3.

<u>ANIL KSHETARPAL, J.</u> **(ORAL)**

<u>CM-22857-CII-2013</u>

The application is allowed for the reasons stated therein. Delay of 473 days in refiling the appeal is condoned.

CM stands disposed of.

<u>Main appeal</u>

Claimants are in the appeal for enhancement of the compensation.

Claimants had lost their young son in a motor vehicular accident when he was 20 ½ years old. The learned Motor Accident Claims Tribunal, Jind (`the Tribunal' for short) has awarded a total sum of Rs.2,69,200/-. The deceased had passed his senior secondary examination, i.e. 10+2. It was claimed that the deceased was running a welding shop and also working as an agent of PACL Company. However, no evidence was produced on the file to prove those facts. The learned Tribunal assumed that the deceased was a casual worker and assessed the income at Rs.120/- per day equivalent to Rs.3,600/- per month. Since the deceased was unmarried and therefore, 50% was deducted towards personal expenses. The learned Tribunal applied a multiplier of 12, considering the age of the parents of the deceased and also awarded Rs.10,000/- towards transportation and for funeral.

Learned counsel for the appellants has vehemently argued that the multiplier applied by the learned Tribunal is erroneous, as the age of the parents could not be considered for the purpose of working out compensation payable. He has further submitted that no amount has been awarded on account of future prospects. He has submitted that as per the Constitution Bench judgment of the Hon'ble Supreme Court in **SLP (C) No.25590 of 2014 (National Insurance Company Limited Vs Pranay Sethi and others)** decided on 31.10.2017, 40% amount is to be added towards future prospects. He also submits that the deceased could not be taken as unskilled labourer as he had already passed Senior Secondary examination.

This Court has considered the submissions and with their able assistance gone through the impugned award passed by the learned Tribunal and the record.

In the considered opinion of this Court, the income assessed by the learned Tribunal is on the lower side. The accident took place on 21.7.2011. The deceased was reasonably educated. Though, no evidence has been produced in the file to prove that he was running a welding shop or was working as an agent of PACL Company, but keeping in view the fact that the deceased was educated, the income of the deceased cannot be assessed below a skilled worker. Hence income of the deceased is assessed at Rs.4,500/- per month. 40% of the income is to be added towards future prospects, which comes to Rs.6,300/- per month (4500+4500X40%). 50%(i.e. 6300X1/2 =Rs.3150/-) is to be deducted towards personal expenses and thus yearly dependency comes to Rs.37,800/- (3150X12).

The multiplier applied by the learned Tribunal taking the age of the parents is also erroneous. Taking the age of the deceased, i.e. 20 ½ years, the multiplier of 18 would be applicable. Thus, the total dependency comes to Rs.6,80,400/- (37,800x18) The learned Tribunal has only awarded a sum of Rs.10,000/- towards transportation and funeral. The aforesaid amount is increased to Rs.20,000/-. In this manner, the amount of total compensation comes to Rs.7,00,400/-.

Claimants shall also be entitled for interest @ 6% per annum on the enhanced amount, i.e.Rs.4,31,200/- (Rs.7,00,400-Rs.2,69,200) from the date of filing of petition till realization.

With the above modification in the impugned award dated 3.1.2012 passed by the learned Tribunal, Jind, the appeal is allowed.

07.02.2018 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No