IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 5.4.2018

1. **FAO No.938 of 2013(O&M)**

Meenu …..Appellant

VERSUS

Surender and others .....Respondents

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2. **FAO No.939 of 2013(O&M)**

Meenu …..Appellant

VERSUS

Surender and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishal Yadav, Advocate for
Mr. Vikrant Hooda, Advocate for the appellant.

Mr. Radhey Sham Sharma, Advocate for respondent No.3.

REKHA MITTAL, J. (Oral)

This order shall dispose of FAO Nos.938 and 939 of 2013 as these have emerged out of the same award dated 21.07.2012 passed by the Motor Accidents Claims Tribunal, Jhajjar (in short 'the Tribunal') whereby compensation has been awarded on account of death of Khushi and Mahesh Kumar in a motor vehicular accident that took place on 01.01.2011.

FAO No.938 of 2013 pertains to enhancement of compensation on account of death of Khushi whereas FAO No.939 of 2013 is for enhancement of compensation on account of death of Mahesh Kumar.

FAO No.938 of 2013

The Tribunal has awarded compensation of Rs.2,00,000/-, in regard to death of Khushi aged about 5 years.

Counsel for the appellant would argue that compensation awarded by the Tribunal is on lower side and needs enhancement.

Counsel representing the insurance company has supported assessment made by the Tribunal.

Khushi was 5 years old at the time of occurrence. Her income is assessed at Rs.15,000/- per annum being a non-earning person. As she was 5 years old, admissible multiplier is 15. In this manner, loss of dependency comes to Rs.2,25,000/- (Rs.15000/- x 15).

Claimant shall be entitled to Rs.15,000/- for expenses on funeral.

In view of the above, total compensation comes to Rs.2,40,000/- and the additional amount is Rs.40,000/- (Rs.2,40,000/- - Rs.2,00,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

FAO No.939 of 2013

The Tribunal has awarded compensation of Rs.6,00,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.5000/-
Deduction for personal expenses	1/3rd
Multiplier	14
Loss of dependency	Rs.5,60,000/-
Loss of consortium	Rs.20,000/-
Funeral expenses	Rs.20,000/-

Counsel for the appellant/claimant prays for enhancement of compensation by adopting appropriate multiplier, extending benefit of future prospects and adequate compensation under conventional heads. It is argued that Raj Kumar, father of the deceased, appeared in the witness box and stated that Mahesh was born in the year 1970 on the basis whereof the Tribunal has held that the deceased was more than 40 years of age at the time of occurrence. It is further argued that the claimant has filed an application for additional evidence seeking permission to produce Matriculation Certificate of the deceased as an evidence of his date of birth wherein date of birth of the deceased has been recorded as 13.05.1980. It is argued with vehemence that as the deceased was slightly more than 30 years of age, admissible multiplier should be 17 and benefit of increase in income for future prospects at the rate of 40%.

Counsel representing the Insurance Company has supported assessment made by the Tribunal and so also the multiplier adopted on the premise that as per candid admission of Raj Kumar RW-1, father of the deceased, Mahesh was born in the year 1970 and copy of ration card Ex.R4 further shows that Mahesh was born in the year 1970. It is further argued that the claimant has failed to produce on record the original certificate, therefore, they cannot derive advantage from photocopy of the document sought to be produced by way of additional evidence.

The Tribunal has assessed income of the deceased at Rs.5,000/- per month . Counsel for the claimant has not made any submission justifying enhancement of income. Accordingly, income of the deceased assessed by the Tribunal is affirmed.

The Tribunal, in view of its findings recorded in para 23 of the award has held that the deceased was more than 40 years of age. The claimant has filed an application for additional evidence for producing on record the document (Annexure A-1) which is a photocopy of certificate purported to be issued by Central Board of Secondary Education. Counsel for the claimant, in response to a query by the Court, has fairly informed that the claimant is not in possession of original certificate for making it available for appreciation and consideration. In the given scenario, claimant cannot derive advantage of photocopy of the document (Annexure A-1) particularly in the circumstances that Raj Kumar, father of the deceased, made a candid statement that Mahesh was born in the year 1970 and the same fact was duly recorded in the ration card Ex.R4. As such findings of the Tribunal holding that the deceased was more than 40 years of age are liable to be affirmed. The deduction for personal expenses and multiplier adopted by the Tribunal are ordered to be affirmed. However, claimant shall be entitled to future prospects at the rate of 25%. In this manner, loss of dependency comes to Rs.7,00,000/- [Rs.8,40,000/- (Rs.5000/- x 12 x 14) + Rs.2,10,000/- (25% future prospects) – Rs.3,50,000/- (1/3rd deduction towards personal expenses).

The claimant shall be entitled to following compensation under conventional heads in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270** :-

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.7,70,000/- and the additional amount is Rs.1,70,000/- (Rs.7,70,000/- - Rs.6,00,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

APRIL 5, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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