IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 29.1.2018

1. **FAO No.510 of 2015(O&M)**

Anita Joshi and another …..Appellants

VERSUS

Sarwan Singh and others .....Respondents

Present: Ms. Sukhpreet Kaur, Advocate for the appellants.

Mr. S.S. Goraya, Advocate for respondent No.1 and 2.

Mr. D.P. Gupta, Advocate for respondent No.3.

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2. **FAO No.833 of 2015(O&M)**

The Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Anita Joshi and others .....Respondents

Present: Mr. D.P. Gupta, Advocate for the appellant.

Ms. Sukhpreet Kaur, Advocate for respondent Nos.1 and 2.

Mr. S.S. Goraya, Advocate for respondent Nos.3 and 4.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order shall dispose of FAO Nos.510 and 833 of 2015 as these have emerged out of the same award dated 06.09.2014 passed by the Motor Accidents Claims Tribunal, Jalandhar (in short 'the Tribunal') whereby compensation has been awarded on account of death of Ujjwal Joshi in a motor vehicular accident that took place on 20.01.2012.

FAO No.510 of 2015 has been filed by the claimants seeking enhancement of compensation whereas FAO No.833 of 2015 has been filed by the Insurance Company.

FAO Nos.510 and 833 of 2015

The Tribunal has awarded compensation to the tune of Rs.10,25,000/- detailed hereunder:-

Monthly income of the deceased	Rs.10000/-
Deduction for personal expenses	50%
Multiplier	15
Loss of dependency	Rs.9,00,000/- (Rs.60,000/- x 15)
Loss of love and affection	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-

Counsel for the claimants would argue that the deceased was a student of Diploma in Engineering and he had also been helping his father in the business of Automobile Spare Parts. The Tribunal has not allowed benefit of increase in income for future prospects. Multiplier adopted by the Tribunal is on lower side and needs enhancement.

Counsel representing the Insurance Company, on the other hand, has supported assessment of loss of dependency with the plea that compensation allowed under conventional heads needs to be restricted to Rs.30,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.** It is further argued that as the Tribunal has assessed notional income of the deceased who was student in a College at village Raowali near village Lidhra, Jalandhar, claimants are not entitled to benefit of increase in income for future prospects.

The deceased was a young boy aged about 18/20 years. He met unfortunate end when bus of his institute namely Saint Soldier Group of Institute near Village Lidhra Jalandhar met with an accident due to rash and negligent driving of Bus No.PB-08-PK-9651 of M/s Hero Bus Service. The Tribunal has assessed his income at Rs.10,000/- per month. It is difficult to accept to reason that the deceased would have stagnated at the same income had he remained alive in order to deny benefit of future prospects. This Court in **National Insurance Company Ltd. Vs. Pushpa Singh Chauhan and others, FAO No.1502 of 2015, decided on 20.03.2015** affirmed computation of compensation by the Tribunal whereby in regard to death of a student of B.Tech. Mechanical in Chander Mohan Jha University, Shilong (Meghalya) income was assessed at Rs.10,000/- per month and benefit of future prospects was allowed at the rate of 50%. The said judgment became subject matter of challenge before Hon'ble the Supreme Court in Special Leave Petition (C) S. No.19533 of 2015. Hon'ble the Apex Court dismissed the appeal with the findings that no legal and valid ground for interference is made out. When the instant case is examined in the light of judgment in **Pushpa Singh Chauhan's case** (supra), claimants shall be entitled to increase in income for future prospects at the rate of 40% in the light of judgment in **Pranay Sethi and others case** (supra).

The Tribunal has allowed multiplier of 15. Indisputably, deceased was in the age bracket of 16-25. In the light of enunciation laid down by Hon'ble the Supreme Court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR**

(Civil) 77, Munna Lal Jain and others versus Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447 and **Pranay Sethi and others case** (supra), admissible multiplier would be 18. In this manner, loss of dependency comes to Rs.15,12,000/- [Rs.21,60,000/- (Rs.10000 x 12 x 18) + Rs.8,64,000/- (40% future prospects) – Rs.15,12,000/- (50% deduction towards personal expenses).

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

In view of the above, total compensation comes to Rs.15,42,000/- and the additional amount is Rs.5,17,000/- (Rs.15,42,000/- - Rs.10,25,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to mother of the deceased.

Counsel for the insurance company has assailed findings of the Tribunal on issue No.4 and 5 (mentioned as issue No.4 and 4-A) primarily on the ground that the same are liable to be set aside on the principle of res judicata. It is argued that in another case arising out of the same occurrence in MACT case No.22 of 2012, driving licence and route permit were not produced on the basis whereof issue No.2 qua the question of liability was decided with the observations that the respondent No.3 is given recovery rights to recover the amount of compensation, if any, paid by it to claimants, from respondents No.1 and 2. It is further argued that in para 23 of the award, there is reference to MACT Case No.22 of 2012 and the Tribunal has held that the documents have been produced and proved and award passed in MACT Case No.22 of 2012 is subjudice before the High Court in FAO No.365-2014. According to counsel, FAO No.365 of 2014 filed by M/s Hero Bus Service, registered owner of the offending vehicle has since been dismissed, therefore, findings recorded by the Tribunal in case No.22 of 2012 have attained finality between the co-respondents, thus, would constitute res judicata, therefore, findings of the Tribunal on issue No.4 and 5 cannot be allowed to sustain and liable to be set aside. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Mahboob Sahab Vs. Syed Ismail and others, AIR 1995 SC 1205**.

Counsel representing the driver and owner of the offending vehicle has neither disputed that findings in MACT Case No.22 of 2012 have been affirmed in FAO No.365 of 2014 decided on 05.02.2015 nor advanced any argument to say something about the ratio laid down in **Mahboob Sahab's case** (supra) nor cited any contrary law.

In view of the above, I find merit in contention of the insurance company that findings recorded by the Tribunal on issues No.4 and 5 (wrongly described as issue No.4 and 4-A) cannot be allowed to sustain and liable to be set aside. As a consequence, insurance company shall have right of recovery against the insured after payment of compensation to the claimants.

The appeals are partly allowed in the aforesaid terms. No order as to costs.

JANUARY 29, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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