IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212 **FAO-9307-2014(O&M)**

Date of Decision:07.03.2018

National Insurance Company Limited .....Appellant

Versus

Rajni and others .....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. S.S. Sidhu, Advocate, for the appellant.

None for the respondents.

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HARI PAL VERMA, J.(Oral)

Appellant-National Insurance Company Limited has filed the present appeal against the award dated 28.08.2014 passed by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short "the Tribunal").

In a claim-petition filed by the respondents-claimants under Section 166 of the Motor Vehicles Act, the Tribunal has awarded a total compensation of ₹20,95,000/- on account of death of Rajesh Kumar in a motor vehicular accident, which took place on 11.04.2012. The deceased was driving the motorcycle at a moderate speed and in the right manner. However, at about 9.30 AM, when he reached near the village Kazibans, the offending truck bearing registration No.HR46-B-3522 hit the motorcycle driven by the deceased. As a result thereof, the deceased fell down and was crushed under the tyre of the offending truck and died at the spot.

Accordingly, FIR under Sections 279, 304-A IPC was registered on the basis of statement of Arun Kumar against the driver of the offending truck.

The claimants have claimed that they were dependent upon the income of the deceased, who was a photographer by profession and was running a shop in the name of Raj Studio at Yamuna Nagar. The deceased was about 37 years of age. The claimants assert that the deceased being a photographer was earning ₹15,000/- to ₹20,000/- per month and was a member of photographer association. The Tribunal has awarded compensation while assessing the income of the deceased as ₹10,000/- per month and has applied multiplier 15 by adding 50% for loss of future prospects. The Tribunal has also applied 1/4th deductions on the compensation so awarded. Accordingly, a total compensation of ₹20,95,000/- has been awarded to the claimants.

Learned counsel for the appellant has argued that the Tribunal has awarded compensation by considering the income of the deceased as ₹10,000/- per month without there being any evidence to that effect. Similarly, as held by the Hon'ble Apex Court in case **National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) R.C.R (Civil) 1009,** the claimants were entitled for an addition of 40% future prospects instead of 50% as awarded by the Tribunal. He has further argued that since income of the deceased was not established, therefore future prospects should not have been awarded. At best, income of the deceased could have been assessed notionally.

No one is present on behalf of the respondents-claimants.

I have heard the learned counsel for the appellant.

There is no dispute that deceased Rajesh Kumar was about 37 years of age at the time of his death and was a photographer by profession and was running a shop in the name of Raj Studio at Yamuna Nagar. He was a member of the photographer association, which has duly been supported by the assertion of PW3 Parmod Kumar, Senior Vice President of Yamuna Nagar Photographers' Association. Though, the claimants claimed the income of the deceased as ₹15,000/- to ₹20,000/- but they have not come forward to challenge the award. This Court finds that the income of the deceased which has been assessed as ₹10,000/- per month is certainly not on the higher side. The deceased was a photographer by profession and was a technical hand. Therefore, considering his profession, experience and the fact that the deceased was running a shop for the last about five years, he must have been earning more than ₹10,000/- per month. Therefore, the Tribunal has rightly assessed the income of the deceased as ₹10,000/- per month.

The plea raised by learned counsel for the appellant that at the most, income of the deceased was to be treated as notional income and no future prospects can be allowed, is liable to be negated, in view of the Hon'ble Apex Court judgment in case **V. Makala Versus M. Malathi and another,** 2014(2) R.C.R. (Civil) 880, whereby while relying upon the judgment in case **Santosh Devi Versus National Insurance Company Limited and others,** 2012 (2) R.C.R. (Civil) 882, the claimant was held entitled to 50% towards future prospects on notional income even. Therefore, there is nothing wrong in the award passed by the Tribunal whereby income of the deceased has been assessed as ₹10,000/- per month. Even otherwise, where the minimum income is determined by guess work, acceptance of actual income and principle of adding on account of future prospects cannot be distinguished and the Hon'ble Supreme Court has held that both situations are stated to be on the same footing. Reference may be made to the order dated 22.11.2017 passed by the Hon'ble Apex Court in **Special Leave Petition (Civil) No.22134 of 2016** titled as **Hem Raj Versus The Oriental Insurance Company Limited and others**.

Though this Court finds that the claimants are entitled for future prospects @ 50%, but in view of order passed in **Hem Raj's case (supra)**, the amount already received by the claimants is not liable to be refunded.

Accordingly, in view of the protection granted by Hon'ble Apex Court, this Court finds that small variations shall not entitle the appellant to effect recovery from the claimants, even if any amount has been paid in excess to the calculations.

This Court does not find any merit in the present appeal and the same is hereby dismissed.

March 07, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No