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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM No.11240-CII of 2016 in/and
FAO No.3093 of 2016**

Date of Decision : 30.01.2019

TULSA AND OTHERS

….APPELLANTS

V/S

PARWINDER SINGH AND OTHERS

….RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Vikram Bali, Advocate for the appellants.

Mr. Gopal Mittal, Advocate
for respondent No.3/*Insurance Company*.

B.S. WALIA, J. (ORAL)

CM NO.11240-CII of 2016

Application for condonation of delay is not opposed by learned counsel for respondent No.3.

For the reasons as are mentioned in the application as also in view of the statement of learned counsel for respondent No.3, the same is allowed. Delay of 516 days in late filing of the appeal is condoned, subject to all just exceptions.

FAO No.3093 of 2016

[1] Appeal has been filed by the widow and four minor children of Manbir Singh, who died in a motor vehicular accident on 25.05.2012.

[2] Appeal has been filed, seeking enhancement of compensation of ₹ 8,73,800/-, awarded by the learned Motor Accidents Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') on the ground that the addition to the established income of the deceased was wrongly made @ 30% as against the requirement to make addition towards the established income @ 40% in view of the deceased being self employed and below 40 years of age. Secondly, the multiplier had wrongly been applied as '12' as against the requirement to apply multiplier of '15'. Thirdly, deduction towards personal expenses made @ 1/3rd of the income of the deceased was legally unsustainable, since the deceased left behind five dependents, therefore deduction was required to be made @ 1/4th of the income of the deceased. Further no amount had been awarded on account of loss of estate.

[3] *Per contra*, learned counsel for respondent No.3 contended that although the deceased was a skilled daily wager yet income of the deceased had been assessed at ₹ 6000/- per month i.e. much more than was permissible to a skilled worker as per the notification for the relevant period issued under the Minimum Wages Act by the State of Haryana. Copy of the notification, showing minimum wages of ₹ 5367.17 payable to a skilled daily wager, duly signed by learned counsel for respondent No.3 is taken on record as Mark-A. The same is not disputed by learned counsel for the appellants.

[4] Accordingly, the income of the deceased is taken as ₹ 5367.17 rounded of to ₹ 5368/- per month. Admittedly, the deceased was 38 years of age and as per decision of Hon'ble the Supreme Court in '***Sarla Verma and others*** *versus* ***Delhi Transport Corporation and another***', *2009(6) SCC 121,* for the age group of 36 to 40, multiplier of '15' is applicable. Accordingly, as

against multiplier of '12' applied by the learned Tribunal, multiplier of '15' shall be taken into account for computing the compensation payable.

[5] Further a sum of ₹ 1,00,000/- was awarded on account of loss of spousal consortium. However, the deceased died leaving behind widow and four minor children. As per paragraph No.61 (viii) of the decision in '***National Insurance Company Limited*** *versus* ***Pranay Sethi and others***', *2017(4) RCR (Civil) 1009*, ₹ 40,000/- is payable on account of loss of spousal consortium. However as per subsequent decision of Hon'ble the Supreme Court in '***Magma General Insurance Company Limited*** *versus* ***Nanu Ram alias Chuhru Ram and others***', *2018(4) RCR (Civil) 333*, a sum of ₹ 40,000/- is payable to each child of the deceased on account of loss of parental consortium. Since the deceased left behind his widow and four minor children, therefore, the appellant widow is held entitled to ₹ 40,000/- on account of loss of spousal consortium, while the four children of the deceased are held entitled to ₹ 40,000/- each on account of loss of parental consortium, total ₹ 2,00,000/-. However, in view of subsequent decision of Hon'ble the Supreme Court in '***Vimla Devi*** *versus* ***National Insurance Company Limited and others'***, *2019(1) R.C.R. (Civil) 86,* involving a widow and two minor children, the loss of consortium was restricted to ₹ 1,00,000/-. Accordingly, in the light of decision of Hon'ble the Supreme Court in '***Vimla Devi's*** *case (supra)*, lose of spousal/parental consortium is restricted to ₹ 1,00,000/-. No amount has been paid on account of loss of estate. Accordingly, in terms of paragraph No.61 (viii) of the decision of the Hon'ble Supreme Court in ***Pranay Sethi's*** *case (supra)*, the appellants are held entitled to ₹ *15*,000/- on account of loss of estate. A sum of ₹ 25,000/- was awarded on account of funeral expenses. However, the same is liable to be scaled down to ₹ 15,000/- in terms

of paragraph No.61 (viii) of decision of Hon'ble the Supreme Court in ***Pranay Sethis***' *case (supra)*. Accordingly, in the light of the position as noted above, the appellants are held entitled to the following compensation:-

Particulars	**Assessed by the Tribunal (in ₹)**	**Re-assessed by the High Court (in ₹)**
Income assessed	6000/-	5367.17 (rounded of to ₹5368/-)
Add:Future Prospects	30% of 6000=1800/-	40% of 5368 =2147/-
Deductions	1/3rd of 7800 = 2600/-	1/4th of 7515 =1878.75 (rounded of to ₹1879/-)
Total Income	5200	5636
Multiplier	12	15
Loss of Dependency	5200x12x12=7,48,800/-	5636x12x15=10,14,480/-
Loss of Consortium	1,00,000/-	40,000/- to the widow 40,000/- to each child i.e. ₹1,60,000/- Total ₹2,00,000/- Restricted to ₹ 1,00,000/- in terms of decision of Hon'ble the Supreme Court in '***Vimla Devi's*** *case (supra)*.
Loss of Estate	NIL	15,000/-
Funeral Expenses	25,000/-	15,000/-
Total Compensation	**8,73,800/-**	**11,44,480/-**

[6] Accordingly, in the light of the position as noted above, as against a sum of ₹ 8,73,800/-, the appellants are held entitled to ₹ 11,44,480/- alongwith interest @ 7.5% per annum from the date of the claim petition, till date of payment, less payment, if any already made.

[7] Needless to mention, the Insurance Company shall deduct tax liability if any qua future prospects in accordance with the decision in ***Pranay***

<u>Sethi's</u> *case (supra)* and further that the compensation shall be apportioned amongst the appellants in the manner indicated by the learned Tribunal, Panchkula, in the award. Accordingly, appeal is **allowed**, award dated 30.07.2014, passed by the learned Tribunal, Panchkula, is **modified** to the extent as noted above.

(B.S. WALIA)
JUDGE

January 30, 2019
'rajneesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No