IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

221 **FAO No.3499 of 2016**
Date of Decision : 05.03.2019

FARIDA AND OTHERS ....APPELLANTS

V/S

JAAN MOHD. AND ANOTHER ....RESPONDENTS

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

Present: Mr. Sanjeev Kumar Bawa, Advocate
for the appellants.

None for respondent No.1.

Mr.Vinod Chaudhary, Advocate
for respondent No.2/*Insurance Company*.

B.S. WALIA, J. (ORAL)

[1] Appeal has been filed by the widow and parents of Khurshid, who received injuries in a motor vehicular accident on 16.05.2013 and died as a result thereof on 06.06.2013.

[2] Prayer is for enhancement of compensation of ₹ 9,06,121/- awarded by the learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal').

[3] Learned counsel for the appellants contended that the deceased was treated as a Farm Labour. Consequently, was entitled to be treated as a semi skilled labourer and although the income of the deceased had been taken @ ₹5500/- per month by the learned Tribunal as per the notification issued under the Minimum Wages Act, 1948 which provided for ₹5472.15 per month

to a semi skilled labourer yet while making computation of the compensation payable, the income had been taken @ ₹5000/- per month.

[4] Learned counsel for the appellants contends that the income of ₹5472.15 (rounded of to ₹5500/-) is the income which is liable to be taken into account for the purpose of computing compensation payable. Secondly, no amount has been awarded on account of future prospects, whereas as per paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in '***National Insurance Company Limited*** *versus* ***Pranay Sethi and others***', *2014(4) RCR (Civil) 1009*, 40% of the established income of the deceased minus the tax component is to be taken into account towards future prospects. Thirdly, that no amount had been awarded on account of loss of estate, besides the deceased on sustaining injuries had remained admitted in hospital for a period of 21 days and therefore some amount ought to have been awarded on account of transportation charges, attendant charges and pain & suffering.

[5] Learned counsel for the appellants further states that the Tribunal reimbursed medical expenses of ₹1,00,000/- and ordered payment of medical expenses of ₹1,01,189/- incurred on the treatment of the deceased during the period he remained hospitalized till his death.

[6] Learned counsel for the respondent-Insurance Company does not dispute that there has been an error by the learned Tribunal while making computation of compensation payable in terms of notification under the Minimum Wages Act 1948 by taking into account the income of the deceased at ₹5000/- per month as against ₹5500/- per month,. However, learned counsel contends that award of ₹1,00,000/- on account of loss of consortium is on the higher side and as per paragraph No.61(viii) of the decision of Hon'ble the Supreme Court in ***Pranay Sethi's*** *case (supra)*, only a sum of ₹40,000/- is

payable as loss of spousal consortium to the widow of the deceased. Besides as against ₹25,000/- awarded on account of funeral expenses, the claimants are liable to be awarded only ₹15,000/- on account of funeral expenses.

[7] I have considered the submissions of learned counsel for the parties.

[8] Admittedly, the deceased was 27 years of age. Income as has been noted above, is to be taken @ ₹5500/- per month. Future prospects are to be awarded @ 40% of the established income of the deceased minus the tax component. Further as per the decision of Hon'ble the Supreme Court in '***N. Sivammal*** *versus* ***Managing Director, Pandian Roadways Corporation***', *1985(1) SCC 18*, the claimants are entitled to a token amount on account of pain and suffering of the deceased during the time he remained admitted. Accordingly, I award a sum of ₹20,000/- on account of pain & suffering of the deceased as well as of his family members during the period the deceased remained admitted in hospital for treatment. A sum of ₹1,00,000/- was paid on account of medical expenses incurred. However, no amount has been paid on account of attendant charges. Accordingly, I award a sum of ₹3000/- on account of attendant charges during the 21 days period the deceased remained admitted in hospital.

In the light of the position as noted above, the appeal is allowed and the appellants are held entitled to the following compensation:-

Particulars	**Assessed by the Tribunal (in ₹)**	**Re-assessed by the High Court (in ₹)**
Income assessed	5000	5472.15 (rounded of to 5500)
Add:Future Prospects	NIL	40% of 5500=2200
Deductions	1/3rd of 5000=1667	1/3rd of 7700=2567

Total Income	3333	5133
Multiplier	17	17
Dependency	3333x12x17=6,79,932	5133x12x17=10,47,132
Loss of consortium	1,00,000	40,000 to the widow of the deceased
Funeral Expenses	25,000	15,000
Loss of Estate	NIL	15,000
Medical Expenses	1,01,189	1,01,189
Pain & Suffering	NIL	20,000
Attendant Charges	NIL	3,000
Total compensation	**9,06,121**	**12,41,321**

[9] Accordingly, as against compensation of ₹9,06,121/- awarded by the learned Tribunal, the appellants are held entitled to award of compensation of ₹12,41,321/- along with interest @ 9% per annum from the date of filing of the claim petition till date of payment, less amount if any already paid.

[10] Learned counsel for the parties jointly state that the income of the deceased was much below the taxable limit, therefore, no income tax is to be deducted on account of future prospects.

[11] Accordingly, the appeal is ***allowed***, award dated 14.10.2015, passed by the learned Tribunal, Gurgaon, is ***modified*** to the extent as noted above.

(B.S. WALIA)
JUDGE

March 05, 2019
'Rajneesh'

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