IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102 **FAO No.5013 of 2017 (O&M)**
Date of Decision : 29.01.2019

RAVI PARKASH (MINOR) AND ANOTHER

….APPELLANTS

V/S

BALKAR SINGH AND ANOTHER

….RESPONDENTS

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

Present: Mr. Chander Pal Tiwana, Advocate for the appellants.

Mr. Abhinav Singla, Advocate for
Mr. Rajbir Singh, Advocate
for respondent No.2-*Insurance Company*.

B.S. WALIA, J. (ORAL)

CM No.15222-CII of 2017

For the reasons as mentioned in the application, the same is allowed. Delay of 238 days in late filing of the appeal is condoned, subject to all just exceptions.

FAO No.5013 of 2017

[1] Appeal has been filed by the two minor sons of Hardei, who died in a motor vehicular accident at the age of 40 years on 22.02.2015.

[2] The learned Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal') assessed the income of the deceased as casual labourer @ ₹ 8580/- per month as per the then prevalent rates, applied multiplier of '15', made deduction of 1/3rd of the income of the deceased towards her personal expenses and further by awarding ₹2,00,000/- (i.e.

₹1,00,000/- to each of the appellants) on account of loss of love and affection, ₹20,000/- on account of funeral expenses, awarded total compensation of ₹12,49,600/-.

[3] Learned counsel for the appellants contends that the appeal is liable to be allowed, award modified and compensation enhanced by taking the notional contribution of the deceased as a housewife at ₹9000/- per month in accordance with the decision of this Court in FAO No.4763 of 2016 in case titled as '***United India Insurance Company Limited*** *versus* ***Mohit and Others***', by excluding deduction towards personal expenses of the deceased from the notional contribution of the deceased housewife towards the family and by awarding compensation on account of loss of parental consortium to each of the appellants @ ₹40,000/- besides award of ₹15,000/- on account of loss of estate.

[4] *Per contra*, learned counsel for the respondents contended that a sum of ₹2,00,000/- awarded on account of loss of love and affection i.e. ₹1,00,000/- to each of the appellants was not sustainable.

[5] Learned counsel further contended that ₹ 20,000/- awarded on account of funeral expenses is also on the higher side and was required to be scaled down to ₹15,000/-.

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

[7] Admittedly, the deceased was a widowed housewife around 40 years of age at the time of her death in a motor vehicular accident on 22.02.2015. In '***United India Insurance Company Limited's*** *case (supra)* i.e. FAO No.4763 of 2016, taking into account death of the housewife in the year 2015, contribution of the deceased housewife towards her family was

assessed at ₹9000/- per month in the light of decision of a Co-ordinate Bench of this Court in FAO No.218 of 2014, decided on 15.01.2014 in case titled as '***United India Insurance Company Limited*** *versus* ***Sube Singh and others***', wherein the date of death of the housewife was 23.11.2012. Since the date of death of the mother of the appellants is 22.02.2015 therefore, notional contribution of the deceased is taken at ₹9000/- as against ₹8580/- as taken into account by the Tribunal. Secondly, in view of decision of a Co-ordinate Bench of this Court in case '***Cholamandalam MS General Insurance Company Limited*** *versus* ***Lakhmi Chand and others***', *FAO No.4763 of 2016, decided on 25.09.2018*, deduction towards personal expenses are not to be made in the case of notional income. Relevant extract of the decision in ***Cholamandlam's case*** (supra) is reproduced as under:-

> *" If we are taking the notional income for a housewife then no amount should be added for future prospects. The Hon'ble Supreme Court in Arun Kumar Aggarwal and another vs. National Insurance Company and others, 2010(3) PLR (SC) 418 did not award anything for future prospects where a housewife had died. Similarly in Krishan Gopal vs. Lala, 2013(4) RCR (Civil) 276 a child had died and two Judges Bench of the Hon'ble Supreme Court while awarding compensation did not take anything for future prospects. In my opinion when the claimants are unable to prove that the deceased was earning and notional income is taken into account for calculating the loss, then benefit for future prospects should not be added. It is one thing to count income for future prospects when the income is proven but where the income is notional as in the case of a student or a housewife, it may not be appropriate to award further benefit of notional future prospects, particularly when in the cases of notional income the Courts are not making any deduction for personal expenses."*

[8] Accordingly, in the light of aforementioned decision, award of the learned Tribunal, Kaithal is modified to the extent that no deduction would be made towards the personal expenses of the deceased while computing the compensation payable to the appellants.

[9] As regards compensation on account of conventional heads, it needs to mention here that as per paragraph No.61 (viii) of the decision in '***National Insurance Company Limited*** *versus* ***Pranay Sethi and others***', *2017(4) RCR (Civil) 1009*, the appellants-claimants are entitled to award of ₹ 15,000/- on account of loss of estate besides like amount on account of funeral expenses as against ₹ 20,000/- awarded vide the impugned award. Moreover, as per the decision of Hon'ble the Supreme Court in case titled as '***Magma General Insurance Company Limited*** *versus* ***Nanu Ram alias Chuhru Ram and others***', *2018(4) RCR (Civil) 333*, each of the appellants-claimants are entitled to award of ₹ 40,000/- on account of loss of parental consortium. However, no amount is payable on account of loss of love and affection. Accordingly, in the light of the position as noted above, the appellants-claimants are held entitled to the following compensation:-

Particulars	**Assessed by the Tribunal (in ₹)**	**Re-assessed by the High Court (in ₹)**
Income assessed	8580/-	9000/-
Add:Future Prospects	NIL	NIL
Deductions	1/3rd of 8580 = 2860/-	NIL
Total Income	5720/-	9000/-
Multiplier	15	15
Dependency	5720x12x15=10,29,600/-	9000x12x15=16,20,000/-
Funeral Expenses	20,000/-	15,000/-
Loss of Estate	NIL	15,000/-
Loss of love and	2,00,000/-	NIL

affection	(i.e. ₹ 1,00,000/- to each of the appellants)	
Loss of consortium	NIL	40,000/- to each of the appellants i.e. ₹80,000/-
Total compensation	**12,49,600/-**	**17,30,000/-**

[10] Accordingly, in the light of the position as noted above, appellants-claimants are held entitled to award of compensation of ₹ 17,30,000/- as against ₹ 12,49,600/-, awarded by the Tribunal alongwith interest @ 7.5% per annum with effect from the date of claim petition, till date of payment. Accordingly, appeal is **allowed**, award dated 15.02.2016, passed by the learned Tribunal, Kaithal, is **modified** to the extent as noted above.

(B.S. WALIA)
JUDGE

January 29, 2019
'rajneesh'

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