IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 8.2.2019

1. **FAO No. 6331 of 2017(O&M)**

Rihana and others …..Appellants

VERSUS

Sukhdev Singh and others .....Respondents

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2. **FAO No. 6332 of 2017(O&M)**

Shabana and others …..Appellants

VERSUS

Sukhdev Singh and others .....Respondents

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3. **FAO No. 6333 of 2017(O&M)**

Khushnuma and others …..Appellants

VERSUS

Sukhdev Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: None for the appellants.

REKHA MITTAL, J. (Oral)

CM No.20334-CII of 2017

Prayer in this application is for condoning delay of 115 days in filing he appeal.

Heard.

In view of averments made in the application supported by an affidavit of Rihana-appellant No.1, the application is allowed. Delay of 115 days in filing the appeal stands condoned, subject to the condition that in case the appellants succeed in appeal, they will forgo interest for the period of delay.

Disposed of accordingly.

<u>FAO No. 6331 to 6333 of 2017</u>

Mr. Raj Kumar, Advocate, has caused appearance on behalf of insurance company.

This order will dispose of FAO No.6331 to 6333 of 2017 as these have emerged out of the same accident that took place on 09.05.2016 in which Sadakat @ Chota, Naseem, Imlac, Insad @ Insad Ali @ Mohd. Insad sustained injuries. The appeals have been filed by the claimants seeking enhancement of compensation.

<u>FAO No. 6331 of 2017</u>

The Motor Accidents Claims Tribunal, Fatehgarh, Sahib (In short 'the Tribunal') has awarded compensation of Rs.11,96,000/- detailed hereunder:-

Monthly dependency	Rs.5250/-
Multiplier	17
Loss of dependency	Rs.10,71,000/-
Loss of consortium to widow	Rs.1,00,000/-
Funeral Expenses	Rs.25,000/-

The plea of the claimants is that the deceased was running a kulhari for making gur (Jaggery) and had been earning Rs.20,000/- per month.

Rihana, widow of the deceased appeared in the witness box to substantiate plea of the claimants but her testimony does not find corroboration from independent source much less documentary evidence. In the given circumstances, the Tribunal has rightly refused to rely upon testimony of Rihana that the deceased was earning Rs.20,000/- per month.

The deceased was less than 30 years of age and left behind family consisting of his widow, three minor children and mother. There is nothing on record suggestive of the fact that deceased had any disability to make livelihood for his family. Taking a clue from the notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.8000/- per month. Claimants shall be entitle to addition in income for future prospects at the rate of 40%. Admissible deduction for personal and living expenses of the deceased would be 1/4th. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency comes to Rs.17,13,600/- [Rs.16,32,000/-(Rs.8000 x 12 x 17) + Rs.6,52,800/- (40% towards future prospects) - Rs.5,71,200/-(1/4th towards personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that the claimants shall be entitle to Rs.70,000/- under conventional heads, in the light of judgments of Hon'ble the Supreme court **National Insurance Company Ltd. Vs. Pranay Sethi and others,2017 SCC 1270** and **Sebastiani Lakra and other Vs. National Insurance Co. Ltd. And another, AIR 2018 SC 5034** detailed hereunder:-

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15.000/-

In view of the above, total compensation is Rs.17,83,600/- and the additional amount is Rs.5,87,600/- (Rs.17,83,600/- - Rs.11,96,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 115 days in filling the appeal, to be shared by the minor children of the deceased in equal ratio, to be invested in fixed deposit till they attain age of majority or for period of three years whichever is later. Interest accruing on the fixed deposit shall be payable to the mother for meeting their expenses.

The appeal is partly allowed in the aforesaid terms.

FAO No. 6332 of 2017

In view of findings recorded in FAO No. 6331 of 2017, income of the deceased is assessed at Rs.8000/- per month. Claimants shall be entitle to addition in income for future prospects at the rate of 40%. The application for compensation has been filed by the widow, two minor children and parents of the deceased. Even if father of the deceased is not dependent on his earning, admissible deduction would be $1/4^{th}$. The deceased was 22 years old as per postmortem report but in the voter card his date of birth is 23.03.1992 and accordingly he was less than 25 years of age at the time of occurrence. The multiplier available is 18 in place of 17 allowed by the Tribunal. In this manner, loss of dependency comes to Rs.18,14,400/- [Rs.17.28,000/- (Rs.8000 x 12 x 18) + Rs.6,91,200/- (40% towards future prospects) – Rs.6,04,800/- ($1/4^{th}$ towards personal expenses)].

Under conventional heads, compensation warded by the Tribunal is modified to the effect that the claimants shall be entitle to Rs.70,000/- detailed hereunder:-

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-

Loss of estate Rs.15,000/-

In view of the above, total compensation is Rs.18,84,400/- and the additional amount is Rs.6,88,400/- (Rs.18,84,400/- - Rs.11,96,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 115 days in filing the appeal, to be shared by the minor children of the deceased in equal ratio, to be invested in fixed deposit till they attain age of majority or for a period of three years whichever is later. Interest accruing on the fixed deposit shall be payable to the mother for meeting their expenses.

The appeal is partly allowed in the aforesaid terms.

FAO No. 6333 of 2017

In view of findings recorded in FAO No. 6331 of 2017 income of the deceased is assessed at Rs.8000/- per month. Claimants shall be entitle to addition in income for future prospects at the rate of 25%. The application for compensation has been filed by the widow, five children and father of the deceased. One of the sons of deceased is 29 years old. There is nothing on record suggestive of the fact that father of deceased had any disability to be dependent on income of deceased. In the given circumstances, admissible deduction for personal and living expenses would be $1/4^{th}$. The multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency comes to Rs.15,30,000/- [Rs.16,32,000/- (Rs.8000 x 12 x 17) + Rs.4,08,000/- (25% towards future prospects) - Rs.5,10,000/- ($1/4^{th}$ towards personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that the claimants shall be entitle to Rs.70,000/- detailed hereunder:-

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation is Rs.16,00,000/- and the additional amount is Rs.4,04,000/- (Rs.16,00,000/- - Rs.11,96,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 115 days in filing the appeal, to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

FEBRUARY 8, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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