IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-200-2003 (O&M)
Date of Decision: March 30, 2015

Piara Singh and another

.....Appellants

Versus

Hari Rattan Singh and others

......Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Ms.Anna Bansal, Advocate
for the appellants.

Mr.Suvir Dewan, Advocate
for respondent No.3-Insurance Company.

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1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

<u>Naresh Kumar Sanghi, J.</u>(Oral)

The present First Appeal against Order has been filed by Piara Singh and Smt.Parkash Kaur, parents of Avtar Singh (since deceased), aged about 25 years at the time of his death in a motor vehicle accident which took place on 27.08.1999, for enhancement of the Award, dated 23.09.2002, passed by learned Motor Accidents Claims Tribunal, Fatehgarh Sahib (for brevity, `the Tribunal').

The original FAO as well as the record was burnt in a fire broken out in the record room of this Court in the year 2011. With the assistance of learned counsel for the parties, the paper book has been reconstructed. The Insurance Company of the offending vehicle has put in appearance through Mr.Suvir Dewan, Advocate. There is no dispute with regard to the documents placed on record by either side.

Learned counsel for the appellant-claimants submits that without taking into consideration the fact that Avtar Singh (since deceased), aged about 25 years at the time of the accident, was holding a Diploma in Civil Engineering and was parting tuitions to the bright students at the time of his death, passed the award. It was well proved on record that there were 25 students taking tuitions from the institute being run by Avtar Singh (since deceased). Every student was paying Rs.400/- (Rupees four hundred only) as tuition fee in addition to

Rs.800/- (Rupees eight hundred only) as registration fee. The total income from the tuitions was Rs.10,000/- (Rupees ten thousand only) per month. She further submitted that in addition to parting tuitions, Avtar Singh (since deceased) was also giving technical advice being Civil Engineer and, as such, earning about Rs.2,000/- per month from such technical advice. It was also pointed out by Ms.Anna Bansal, learned counsel for the appellant-claimants, that Avtar Singh (since deceased) was the only bread-winner for the appellant-claimants and they (appellant-claimants) were wholly dependent upon Avtar Singh (since deceased). The learned Tribunal, without taking into consideration the overall factual and legal aspects of the case, awarded a meagre amount of Rs.1,30,000/- (Rupees one lac and thirty thousand only) to the appellant-claimants. She submitted that the register being maintained by Avtar Singh (since deceased) was placed on record during enquiry before the learned Tribunal, wherein it was scribed that there were as many as 25 students taking tuitions at the time of his (Avtar Singh) death. It was also mentioned in the said register that each student was paying Rs.400/- (Rupees four hundred only) per month as tuition fee, therefore, it was substantiated by the appellant-claimants that Avtar Singh was earning Rs.10,000/- (Rupees ten thousand only) per month from his tuition job and he was also earning approximately Rs.2,000/- (Rupees two thousand only) per month from his technical advice and, as such, the learned Tribunal should have added 50% of his annual income as future prospects of the life. Therefore, his annual income would arrive at Rs.2,16,000/- (Rupees two lacs and sixteen thousand only) (12,000 + 6000 x 12). Even if Rs.10,000/- (Rupees ten thousand only) are deducted as income tax and 50% of the total annual income is deducted as personal expenses of Avtar Singh (since deceased), then the annual dependency of the appellant-claimants would come to Rs.1,03,000/- (Rupees one lac and three thousand only). She further pointed out that the age of Avtar Singh (since deceased) as well as of the appellant-claimants have to be taken into consideration while determining the adequate multiplier. However, in the present case, the said factor by itself would not be sufficient since both the appellant-claimants, who were around 63 years of age at the time of the sad demise of Avtar Singh, are now aged about 80 years and leading a miserable life in the absence of their son and, as such, they have suffered loss for at least 16 years after the death of their son and appellant-claimants would still live at least ten years, therefore, the actual loss can be calculated in view of the peculiar facts and circumstances of the case. She further points out that nothing has been awarded to the appellant-claimants under the heads `love and affection', and the `funeral expenses'. She further points out that on the enhanced amount of compensation, 12% interest should also be awarded to the appellant-claimants.

On the other hand, Mr.Suvir Dewan, learned counsel for the Insurance Company of the offending vehicle very fairly concedes that the issue of accident and negligence is not in dispute, at this stage. He further fairly admits that offending vehicle was insured with the Insurance Company to which he is representing. However, he submits that except the bald statement of the appellant-claimants, there is no other material to show that Avtar Singh (since deceased) was parting tuitions and earning Rs.10,000/- (Rupees ten thousand only) per month from the said profession and additional Rs.2,000/- (Rupees two thousand only) by giving technical advice. Therefore, the nominal income prevalent at that time to a Diploma holder should be assumed to be the income of Avtar Singh (since deceased). He, however, fairly concedes that nothing has been awarded to the appellant-claimants under the heads `love and affection' and `funeral expenses'. Learned counsel for the Insurance Company is not in a position to dispute the fact that the appellant-claimants are still alive.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

Since the factum of accident and negligence on the part of the driver of the offending vehicle are not in dispute, therefore, this Court does not deem it appropriate to discuss all the issues framed by the learned Tribunal. It will be in the interest of justice to discuss/ re-calculate the dependency of the appellant-claimants and other related issues to award the adequate compensation to the appellant-claimants.

So far as the age and education of Avtar Singh (since deceased) are concerned, the same are not in dispute. Therefore, it is held that Avtar Singh (since deceased) at the time of his death was aged about 25 years and was holding a Diploma in Civil Engineering. During the course of her submission, Ms.Anna Bansal, learned counsel representing the appellant-claimants, pointed out that at the time of his death Avtar Singh (since deceased) was parting tuitions to 25 students and was charging Rs.400/- (Rupees four hundred only) from each student, therefore, there is no other evidence to disagree with the said fact and, as such, this Court is of the considered opinion that Avtar Singh (since deceased) was earning Rs.10,000/- (Rupees ten thousand) per month from the tuitions. However, there is no cogent evidence to believe that in addition to tuitions, he was also giving technical advice and earning Rs.2,000/- per month. Hence, this Court holds that Avtar Singh (since deceased) was earning Rs.10,000/- (Rupees ten thousand only) per month. As per findings in **Rajesh and others** **vs.** **Rajbir Singh and others,** 2013(3) RCR (Civil) 170, 50% of his annual income can be added as future prospects. Therefore, if Rs.5,000/- (Rupees five thousand only) is added as monthly future prospects, then the total monthly income of Avtar Singh (since deceased) would be Rs.15,000/- (Rupees fifteen thousand only) and the annual income would be Rs.1,80,000/- (Rupees one lac and eighty thousand only). Out of the said income, Rs10,000/- (Rupees ten thousand only) can be deducted as income tax, therefore, the annual income of Avtar Singh (since deceased) would be Rs.1,70,000/- (Rupees one lac and seventy thousand only). 50% of his annual income can be deducted for his personal expenses, therefore, annual dependency would be Rs.85,000/- (Rupees eighty-five thousand only). As per **Sarla Verma and others vs. Delhi Transport Corporation and others,** 2009(2) SCC (Criminal) 1002, adequate multipler would be of 18. There is no doubt that age of the appellant-claimants and that of the deceased are the relevant consideration for applying the appropriate multiplier. In the case in hand, it is a fact that Avtar Singh (since deceased) had died in the year 1999 and the appellant-claimants, who were aged about 63 and 61 years respectively at that time, are still alive. Therefore, multiplier of 18 would be most reasonable in the present case. If we multiply Rs.85,000/- (Rupees eighty five thousand only) with 18, then the figure would arrive at Rs.15,30,000/-. An amount of Rs.50,000/- (Rupees fifty thousand only) can be awarded under the head `love and affection' to the appellant-claimants. In addition thereto, the appellant-claimants are also entitled to Rs.10,000/- (Rupees ten thousand only) under the head `funeral expenses'. The total amount would come to Rs.15,90,000/- (Rupees fifteen lacs and ninety thousand only).

As per the learned counsel for the parties, Rs.1,30,000/- (Rupees one lac thirty thousand only) has already been paid to the appellant-claimants. The appellant-claimants would also be entitled to the interest @ 9% per annum from the date of petition till the remaining amount is paid.

With the above modification, the appeal is partly allowed.

March 30, 2015 **(NARESH KUMAR SANGHI)**
meenu **JUDGE**