IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.575 of 1991 (O&M)
Date of Decision: February 09, 2015

Smt. Rewati and others

..Appellant(s)

Versus

Udai Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes

Present: Mr. Arjun Singh, Advocate
for the appellants.

Mr. Kapil Bansal, Deputy A.G. Haryana,
for respondents no.2 & 3.

Mr. Abhishek Goyal, Advocate
for respondent no.4.

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<u>ANITA CHAUDHRY, J.</u>

1. This is the claimants' appeal seeking enhancement of the award dated 07.03.1991, passed by the Motor Accident Claims Tribunal, Narnaul (here-in-after referred to as the Tribunal). The grievance of the appellants is that Parbhati Lal deceased was an ex-serviceman and an agriculturist and his income has been taken on the lower side and the findings recorded on issue no.1 holding the deceased of contributory negligence was bad.

2. The facts as narrated by the claimants were that Parbhati Lal was standing on the Kacha Berm of the road which was about four and a half feet above the metalled road. A Haryana Roadways bus came from the bus stand Narnaul side and was overtaking a camel-cart and went to the wrong side of the road and hit Parbhati Lal. Parbhati Lal fell down and suffered injuries on the head which proved fatal. The matter was reported to the police. Initially a DDR was lodged. The FIR was lodged the same day.

3. The claimants had pleaded that the deceased owned 8 Kanals of land and had an income of about 20,000/- per month and owned a tractor.

4. The respondents took the plea that Parbhati Lal was under the influence of liquor and they were arguing and somebody pushed him on the road and was knocked down. The Tribunal partly accepted the statement of the eye-witness and the evidence led by the respondent and held it to be a case of contributory negligence. The income of the deceased was taken at Rs.1,500/- per month as no evidence was led. The multiplier of 15 was applied and the loss was determined at Rs.90,000/-. The respondents were directed to pay Rs.50,000/- to the claimants.

5. The submission made on behalf of the appellants is that the deceased was an agriculturist and income assessed as Rs.1,500/- per month was on the lower side. It was urged that there was no evidence that Parbhati Lal was drunk and

the Tribunal had wrongly accepted the statement of the respondents. It was urged that the accident had occurred on account of negligence of the bus driver and it was not a case of contributory negligence and the income be taken at Rs.5,000/- per month and income towards future prospects be added and they were entitled to compensation for loss of estate, loss of consortium and funeral expenses.

6. The submission on the other hand was that the Tribunal had examined the evidence minutely and had considered the statement of both the sides to arrive at a finding and there is no infirmity. It was urged that if Parbhati Lal was standing on the Kacha Berm with some other persons and had the bus gone to the Kacha side then there would have been more casualties and it was election time and several persons had collected before the election office and there was pushing and jostling and Parbhati Lal suddenly came on the road and was hit by the bus.

7. I find that no issue regarding contributory negligence had been framed. The respondents no doubt had pleaded that Parbhati Lal was drunk and was pushed. No evidence was led to show that Parbhati Lal was drunk. The driver and conductor were inside the bus and there was no occasion for them to note what was happening on the road. The incident had occurred at a busy place and the bus driver was expected to be more careful. The Tribunal should not have accepted the statement of the respondents when there

was no corroboration to their statement. The driver had faced trial. No complaint was given regarding false implication. The Driver did not plead his side of the story except in the written statement. The finding regarding contributory negligence was not based upon cogent evidence and therefore is set aside.

8. So far as the quantum is concerned, the claimant had pleaded that the deceased was an agriculturist and owned 8 Kanals of land. No evidence was led to show his income. The witnesses appearing for the claimants had stated that the deceased owned a tractor but when Rewati-PW2 was cross-examined on this aspect, she was unable to give the registration number of the vehicle and stated that the vehicle had now been sold.

9. In **D . Vinoda** v. **B . Baswa** Raju 1988 ACJ 1072 (AP), the Court considered the principles of assessment where the accident related to the death of an agriculturist cultivating his own lands. It was observed thus:

> *"13. From the aforesaid rulings, the following principles can be summarized:*
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> *(i) In the case of death of an agriculturist owning agricultural land, the value of the 'supervisory' services of the deceased have to be first estimated. This will not be merely equivalent to the value of the services of a farm servant or a manager of the property employed for that purpose. It will be more than that because an ownermanager takes extra care in increasing the income year by year and also in increasing the value of the property. After thus estimating the 'special' value of the supervisory services of an 'owner- manager', a deduction is to be made in respect of the money the deceased would have spent for himself out of such sum and then the annual contribution to the family is to be arrived at.*

Then an actuarial multiplier suitable to the age of the deceased has to be applied from the Actuarial Multiplier Table arrived at in Bhagawan Das v. Mohd. Arif, 1987 ACJ 1052 (AP). To the said sum may be added such sums towards loss of consortium and compensation for loss of expectation of life and pain and suffering as decided in Yerra Varalakshmi v. M.Nageswara Rao, 1988 ACJ 354 (AP).

(ii) It is not permissible to say that no amount need be awarded towards the loss to the dependency merely because the corpus of the agricultural land is left intact for the dependants. When in case of death of non-cultivators who have other properties the properties remain intact and still damages are awarded, there is no reason why on death of cultivators who have agricultural land, a negative attitude should be taken. The general practice of making automatic deductions for the value of property inherited has fallen into desuetude. The value of the accelerated receipt of property cannot according to the Privy Council be treated as a total or partial equivalent of the loss to the dependency inasmuch as the said acceleration has to be set off against the loss of saving of the deceased to the family. At the other extreme, it is equally not permissible to capitalise the income from the land by a number of years' purchase."

10. The High Court thus considered that the value of the services of the deceased shall be assessed at the outset. The Court indeed cautioned that the value of the supervisory services of the deceased is more than the value of the service of a farmservant or a manager of the property.

11. In United India Insurance Co. Ltd., Nizamabad v. G.Rajeshwar 2009(4) ALD 591, a learned single Judge held that the loss of value of supervisory charges would be loss of dependency.

12. In NEW INDIA ASSURANCE CO. LTD. v. YOGESH DEVI 2012 ACJ 702, the owner of a few buses died in a motor vehicle accident. It was claimed that the deceased owned three mini

buses, that he was a driver and an agriculturist and that he was earning more than Rs.35,000/- per month. It was averred that the deceased was earning Rs.3,900/- as a driver. The Supreme Court recognized that the income of the deceased from agricultural lands would continue to accrue to the family and that the income derived by running the three buses also would accrue to the family. In view of the case being very old, instead of remitting the same, the Supreme Court computed the income of the deceased as the salary as the manager of the three buses.

13. The income from agricultural property is not lost. The deceased was stated to be an agriculturist, therefore, no increase in the future prospects could have been made. The land remains with the family and someone will have to be employed to manage the land and therefore, no addition in the income can be made. Considering the fact that the accident had taken place in 1989. The minimum wages then were in the range of Rs.1,000/- per month, I would make no change in the income. Since the dependents were only two, the Tribunal had rightly deducted 1/3rd as personal expenses. The multiplier was also correctly applied and the compensation was correctly calculated at Rs.1,80,000/-. However, I find that no amount was awarded on other heads, therefore, an addition of Rs.5,000/- is made towards funeral expenses. A sum of Rs.10,000/- is added for loss of consortium, a sum of Rs.10,000/- is added on account of loss of estate and a sum of Rs.10,000/- is added on account of loss of love and affection; raising the total to be Rs.2,15,000/-. The Tribunal had awarded a sum of Rs.50,000/- to the claimants,

which shall be deducted and the remaining shall be payable to the appellants within two months, failing which the appellants would be entitled to interest @ 6% from the date of filing of the appeal till realization.

(ANITA CHAUDHRY)
JUDGE

February 09, 2015
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