**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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FAO No. 1105 of 2002
Date of decision : 12.10.2015

Mohinder Kaur and another ....**Appellants**

v.

Palwinder Singh alias Balwinder Singh and others ......**Respondents**

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Present : Mr. H.S. Dhandi, Advocate, for the appellants

Ms. Deipa Singh, Addl. AG, Punjab, for respondents No. 2 to 4

<u>Ramendra Jain, J.</u>

1. Claimants Mohinder Kaur etc. has preferred the present appeal against the award dated 2.3.2001, passed by the learned Motor Accidents Claims Tribunal, Rupnagar (in short 'the learned Tribunal') for enhancement of compensation.

2. Brief facts of the matter in dispute are that around 1.00 P.M. on 15.9.1999, a Punjab Roadways Bus bearing No. PB 12C 9422, driven by respondent No.1 in a rash and negligent manner, rolled down Sukhwinder Singh, since deceased, aged 21 years, near Kahlon S.T.D. Booth in the area of Village Sukhrampura Taprian. Sukhwinder Singh was self employed as a Motor Mechanic with M/s Kulwinder Motor Garage, Rupnagar, besides doing the business of poultry farming and milk selling having income of ₹ 7000/- i.e. ₹

5000/- from motor mechanic work and ₹ 1000/- each from poultry farming and milk selling. Sukhwinder Singh was shifted to Civil Hospital and then to PGI, where after three days i.e. on 18.2.1999 succumbed to his injuries. His widowed mother Mohinder Kaur and younger brother Mangal Singh, aged 19 years, filed claim petition under Section 166 of the Motor Vehicles Act (hereinafter in short called as 'the Act') before the learned Tribunal claiming compensation of ₹ 15 lakhs. Upon notice, respondent No.1 in his written statement admitted the accident, but while denying his fault, pleaded that he was driving the aforesaid bus in a normal speed. In fact, the accident had taken place due to own negligence of the deceased. Respondents No.2 to 4 in their joint written statement also took the above stand as taken by driver-respondent No.1 pleading that the accident, in fact, had taken place due to the negligence of the deceased himself as he tried to cross the busy road without caring the coming bus. In this process, he came in front of the bus and struck against its left headlight. The deceased was shifted to Civil Hospital by respondent No.1 himself and then to PGI Chandigarh and got his treatment done from his own pocket.

3. The learned Tribunal after framing necessary issues and recording evidence of both the sides, considering the deceased as a labourer, assessed his monthly income at ₹ 1500/- per month. After applying a cut of 1/3rd towards his personal expenses, calculated the dependency of the claimants upon him to the tune of ₹ 1000/- per month or ₹ 12,000/- per year and after applying the multiplier of '12', the Tribunal award a total sum of ₹ 1,44,000/- to the claimants to be payable by all the respondents jointly and severally vide impugned award dated 2.3.2001.

4. Learned counsel for the appellants argued that the deceased Sukhwinder Singh, aged 21 years, as a mechanic was earning ₹ 5000/- per

month, besides his income of ₹ 1000/- each from poultry farming and milk selling and thus, in all he had monthly income of ₹ 7000/-. There was no rebuttal to the said evidence led by the claimants qua the income of the deceased, therefore, the learned Tribunal has wrongly and illegally taken his income at ₹ 1500/- per month. Keeping in view his age, the multiplier of '17' should have been applied instead of '12' to the income of the deceased. The learned Tribunal has also erred in not granting any compensation towards consortium, love and affection. Learned Tribunal also granted interest on the lower side. Besides above, the learned Tribunal should have also awarded something towards future prospectus of the deceased.

5. On the other hand, learned counsel for the respondent-Insurance Company refuted the aforesaid submissions.

6. I have given considerable thought to the submissions of both the sides.

7. The deceased had died in a government hospital after three days. During this period the appellants-claimant might have spent something towards his transportation, care, medicines and special diet etc. The learned Tribunal has erred in not considering this aspect of the matter. Hence, taking into account the hospitalization of the deceased for three days, a sum of ₹ 3000/- is awarded to the appellants-claimant towards his care, special diet and miscellaneous expenditure. Though the appellants-claimant have pleaded monthly income of the deceased at ₹ 7000/-, but did not lead any cogent and convincing evidence in this respect, before the learned Tribunal. Kulwinder Singh, PW-4, claiming himself to be the owner of some workshop, has deposed that the deceased Sukhwinder Singh was working with him as a daily wager as well as on commission basis and he used to earn around ₹ 5000/- per month. Sometimes

he used to remain idle. In cross examination, he admitted that he was not maintaining any account and was not an income tax payee. Even he did not produce any documentary evidence to show the exact income of the deceased. Hence, in my considered view the learned Tribunal has rightly ignored his bald deposition not supported by any documentary evidence. As far as alleged income of the deceased of ₹ 1000/- each from selling milk and poultry farming is concerned, the claimants again did not led any evidence. Hence, in the absence of any cogent and convincing evidence on the record regarding income of the deceased, the same has to be taken as that of a casual labourer in the year 1999 in which the deceased died. The wages of a casual labourer in the year 1999 were around 120/- per day i.e. ₹ 3600/- per month or ₹ 43,200/- per year.

8. Now the moot question to be decided is that whether something has to be added to the above income of the deceased arrived at by this Court for computing his future prospects.

9. To deal with the aforesaid question, judicial notice of the various factors and law laid down by the Hon'ble Apex Court in "**Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77; Vimal Kanwar and others v. Kishore Dan and others, 2013(2) RCR (Civil) 945; Rajesh and others v. Rajbir Singh and others 2013(3) RCR (Civil) 170; Smt. Neeta and others v. The Divisional Manager, MSRTC, Kolhapur; 2015(1) RCR (Civil) 625"** have to be taken into consideration.

10. In **Sarla Verma's case** (supra), the Hon'ble Supreme Court has observed as under :

> "10. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. In **Susamma Thomas**, this Court held that the future prospects of advancement in life and career should also be

sounded in terms of money to augment the multiplicand (annual contribution to the dependents); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death.

11. In **Susamma Thomas Case**, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in **Abati Bezbaruah** the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

24. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale

of pay applicable at the time of death and not with reference to any future revision in pay scales. If the contention urged by the claimants is accepted, it would lead to the following situation: The claimants only could rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation."

11. In **Rajesh's case** (supra) the deceased as a clerk was employed in Education Department of the State of Haryana and thus, was having a permanent job. In these circumstances, relying upon **Sarla verma's case** (supra), 50% was added to his monthly salary.

12. Similarly, in **Vimal Kanwar's case** (supra), the deceased was a government servant working as Assistant Engineer with the State Government. Thus, 100% increase was added to his monthly salary to calculate the future prospects.

13. In **Neeta's case** (supra) the income of the deceased at ₹ 4500/- per month being 'skilled workman' as carpenter, was taken at ₹ 6000/- per month by the Hon'ble High Court to calculate the amount of compensation to be granted to their legal heirs. However, the Hon'ble Apex Court took the same as ₹ 12,000/- per moth, keeping in view the Notification issued under the "Minimum Wages Act", whereby the State of Karnataka had fixed minimum wages at such rate for the relevant period for the job of carpenter, which job falls under the category of "skilled workman".

14. However, in **Santosh Devi v. National Insurance Co. Ltd., 2012 (2) RCR (Civil) 882"** deviating from the **Sarla Verma's case** (supra), the

Hon'ble Apex Court has observed as under :-

> "18. We do not think that while making the observations in the last three lines of para 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person, who is self employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident, then the same formula deserves to be applied for calculating the amount of compensation."

15. From the wholesome reading of the above citations, two following things emerges on the record :-

i) The future prospects have to be calculated in those cases where the deceased person has a stable or permanent job.

ii) In different cases, different methods are being adopted i.e. in **Sarla Verma's Case** (supra) and **Rajesh's case** (supra), 50% was added to the monthly salary of the deceased to grant future prospects, whereas in **Susamma Thomas's case,** referred in **Sarla Verma's case** (supra) and in **Vimal Kanwar's case** (supra), 100% increase was added to the monthly salary of the deceased to calculate the future prospects. In "**Abati Bezbaruah v. Director General, Geological Survey of India, 2003(3) SCC 148"** referred in **Sarla Verma's** case (supra), there was a mere increase of 7%. From the adoption of above different methods in different cases, it is evident that there can be no hard and fast rule and criteria to calculate future prospects, in case of death of deceased in a motor vehicular accident, because every case has its own peculiar facts and circumstances. Resultantly, every case has to be dealt with on its own merits, considering its peculiar facts and circumstances.

16. More so, in this era of globalization and multi-national culture, the

expenditure and profits are counted on day to day basis by any employer and he acts very sharply in removing his staff etc. in case his profit reduces even for a short or temporary period. Moreover, it is always found that there is less demand of persons of more than 40 years of age, because in this era of competition, generally an employer always preferred to recruit young boys below the age of 35 years to exploit their skill and extracting their working potential to the maximum for his earnings, which starts decreasing at the age of 40 years. Unemployment in this country has created chaos. Even graduates and post graduates are roaming idle. The fact also cannot be lost of the sight that sometimes a casual labourer does not get the job in the entire month or the entire year.

17. Now adverting to the facts of the present case in the light of the above referred authorities and considering the factum of uncertainty of employment in this era of globalization and multinational culture discussed above, nothing can be added towards future prospects of the deceased, because admittedly, the deceased was a bachelor. He has left behind only his widowed mother and younger brother. No evidence has been brought regarding educational or mechanical qualification of the deceased. Even no diploma or any other experience certificate has been brought by the claimants to prove that the deceased was a skilled mechanic or a poultry farmer. The above income of the deceased arrived by this Court cannot be taken as permanent, he being a temporary workman in some workshop, as he could be removed from service at any moment at the whims & fantasies of his employer. Hence, in the absence of any definite evidence qua qualification, experience and permanent income of the deceased, no benefit, whatsoever, of above referred authorities can be given to the appellants-claimant, because in those cases either the deceased were skilled

workmen or were having permanent job. However, out of the aforesaid income, the deceased might have been spending something towards his personal expenses.

18. In "**Sarla Verma's case** (supra)**, Civil Appeal No. 8612 of 2013** titled as **M. Mansoor and another v. United India Insurance Co. Ltd. and another,** and **Civil Appeal No.9858 of 2013** titled as **Radhakrishna v. Gokul and others",** the Hon'ble Supreme Court has observed that in case of a bachelor, normally 50% has to be deducted as personal living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event, his contribution to the parents and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and mother alone will be considered as a dependent.

19. Since in the instant case the deceased was a bachelor and had left behind his widowed mother and brother, who too will start earning at appropriate age and time, therefore, after applying a cut of 50% to the aforesaid income of the deceased, the dependency of the claimants upon him comes to ₹ 21,600/-per annum. Since the deceased was around 21 years at the time of his death, therefore, it would be appropriate to apply a multiplier of '17' to calculate the total dependency and after applying the same, the compensation to be awarded to the claimants comes to ₹ 3,67,200/-. Besides above, something has to be awarded to the claimants qua love and affection, loss of consortium and funeral expenses. Hence, besides the above compensation of ₹ 3,67,000/-, a sum of ₹ 10,000/- towards funeral expenses, besides ₹ 15,000/- towards consortium and ₹ 50,000/- towards love and affection are also awarded to the

appellants-claimant.

20. In view of the discussion above, the claimants are held entitled to a total compensation of ₹ 3,67,200+10,000+15,000+50,000+3,000= ₹ 4,45,200/- less already paid to them, along with interest @ 9% per annum from the date of filing of the petition till realisation. Accordingly, the appeal is partly allowed.

(RAMENDRA JAIN)
JUDGE

12.10.2015
Ashwani