

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

**FAO No. 2019 of 2002
Date of decision : 17.9.2015**

Hardeep Kaur

.....Appellant

v.

Ram Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Mr. S.S. Virk, Advocate, for the appellants

Mr. Sanjeev Pabbi, Advocate, for the respondents

Ramendra Jain, J.

This order shall dispose of a set of two claim petitions filed by claimant Hardeep Kaur i.e. one for enhancement of compensation on account of pain and injuries suffered by her (FAO No. 2019 of 2002) and another for enhancement of compensation on account of death of her husband Devinderbir Singh Bajwa (FAO No. 2020 of 2002) in a motor vehicular accident, besides Cross Objections filed by respondent No.4 -Insurance Company, for setting aside of the impugned award dated 5.12.2001, passed by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal).

2. Brief facts are that on 26.1.2000, appellant Hardeep Kaur, Amarjit Kaur, Mohinder Pal Singh and Captain Devinderbir Singh Bajwa while coming from Patiala to Bassi Pathana in a Maruti Car bearing No. DL 3CD 7316, being driven by deceased Devinderbir Singh Bajwa, had met with an accident on account of rash and negligent driving of Tata Sumo Jeep bearing No. HR 7C 2660 by respondent No. 1, in the area near Madhopur Crossing, G.T. Road.

Amarjit Kaur and appellant Hardeep Kaur suffered multiple injuries, whereas Mohinder Pal Singh and Captain Devinderbir Singh Bajwa lost their lives in the said accident.

3. In Petition No. 21 under Section 166 of the Motor Vehicle Act, 1988 (in short 'the Act'), she claimed compensation of ₹ 5 lakhs against her injuries, alleging that she remained admitted in PGI from 26.1.2000 to 6.2.2000 as she had suffered fracture clavicle bone, fracture in left wrist, injuries on her face and other parts of her body. She had spent about ₹ one lakh on her treatment and had become permanently disabled.

4. Qua death of her husband, she filed claim petition No. 23 under Section 166 of the Act and claimed compensation of ₹ 10 lakhs, pleading that her deceased husband, an ex Army personnel was self employed, doing agriculture pursuits and dairy farming. He was earning ₹ 15,000/-per month. They were totally dependent upon him.

5. Injured Amarjit Kaur occupant of the aforesaid Maruti car had also put forward her claim for ₹ 5 lakhs against the injuries suffered by her in the impugned accident. Another occupant Rupinder Kaur had also filed claim petition claiming compensation of ₹ 10 lakhs against the death of her husband Harmohinder Pal Singh. Their claim petitions were also decided by the impugned award dated 5.12.2001, but they did not challenge the same by filing any appeal or other proceedings.

6. Respondents No. 1 to 3 in their joint written statement, while admitting the accident had denied the fault of respondent No. 1 as a driver of the offending Tata Sumo by pleading that the accident, in fact, had occurred on account of rash and negligent driving of the car by deceased Devinderbir Singh

Bajwa, but the police had registered a false case against him. In fact, when respondent No. 1 was crossing his green light at Madhopur Chowk, Maruti car being driven by Devinderbir Singh Bajwa came at a very high speed, in a rash and negligent manner, without noticing the red light and struck into their Tata Sumo. Thus, all the claim petitions were liable to be dismissed. Respondent No.4- Insurance Company taking all the defences available to it under Section 147, 149, 157 and 170 etc. of the Act, pleaded that since respondent No.1 was not holding any valid and effective driving licence in utter violation of the terms and conditions of the insurance policy, therefore, it was not liable to pay any compensation.

7. The learned Tribunal after framing issues and taking evidence of both the sides to their satisfaction, granted compensation of ₹ 90,000/- to appellant Hardeep Kaur against the injuries suffered by her, besides ₹ two lakhs two thousand as compensation against the death of her husband Devinderbir Singh Bajwa alongwith interest @ 9% per annum from the date of the petitions till its realization.

8. Learned counsel for the appellant argued that the learned Tribunal has awarded inadequate compensation against the injuries, pain and suffering suffered by the appellant in the impugned accident. It has erred in not granting any compensation towards the person employed by her during her treatment and thereafter, because she had become permanently disabled on account of injuries suffered by her. The learned Tribunal has lost sight of the fact that she had suffered fracture distal radius (left), dislocation of sterno clevicular joint (left), besides fracture mendable and head injuries for which she was operated upon and fracture was fixed with “K” wire. Mendable fracture was also operated by

Dental Surgeon. She was still under treatment and had remained bed ridden for one year. Her body had also disfigured on account of injuries, besides squint in her eye suffered by her in the impugned accident. Hence, the learned Tribunal has also erred in not granting any compensation towards disfiguration of her body and injury to her eye which would cause embarrassment to her in the society, besides various problems in the daily routine jobs. The learned Tribunal should have considered the fact that the entire medical bills were not possible to be procured and produced by the appellant on the record, on account of grievous injuries and her long treatment in the PGI. She had spent ₹ 1 lakh on her treatment and thus, the learned Tribunal has erred in not awarding the same, besides some amount against engagement of attendant for her assistance during her treatment, permanent disablement etc.

9. The learned Tribunal has also erred in taking income of the deceased husband at ₹ 3000/- per month and the dependency of the appellant upon him at ₹ 2000/-, because there was un-rebutted evidence on record that deceased Captain Devinderbir Singh Bajwa was earning ₹ 15,000/- per month from dairy farming and ₹ 2.50 lakhs per annum from agricultural pursuits. He was contributing ₹ 20,000/- per month towards household expenses. The learned Tribunal ought to have granted 20,000/- on her last rites instead of ₹ 10,000/- and interest @ 12% per annum instead of 9% per annum, besides some compensation towards consortium and love and affection. The multiplier of 10 should have been applied by the learned Tribunal instead of 8. The deduction of 1/3rd towards personal expenses of the deceased is also wrong and illegal, keeping in view of the large family to support by him. In support of his arguments, he placed reliance upon “**Raj Kumar v. Ajay Kumar and another;**

2011 ACJ 1 (SC); Rajesh and others v. Rajbir Singh and others, 2013 (9) SCC 54 ; Vimal Kanwar and others v. Kishore Dan and others, 2013(2) RCR (Civil) 945; Smt. Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) RCR (Civil)”.

10. On the other hand, learned counsel for respondent No. 4 argued that respondent No.1 was not holding any valid driving licence at the time of alleged accident. To prove the above fact, the Insurance Company had summoned the clerk of Licensing Authority, who refused to accept his dasti service, therefore, it was incumbent upon the learned Tribunal to adopt some coercive measures to effect his service and examine him. However, instead of adopting any such coercive method, it did not grant any further opportunity to it, to prove the above stated fact. All the claim petitions were liable to be dismissed qua it, because respondent No.1 was driving the offending vehicle in utter violation of the terms and conditions of the insurance policy, exonerating its liability.

11. I have given thoughtful consideration to the submissions of both the sides.

12. Undisputedly, there is no cogent and convening evidence qua medical treatment of appellant Hardeep Kaur on the record. All her assertions qua her injuries, employment of an attendant, sufferings and permanent disability etc. are oral. As per the impugned award she had only produced her medical receipts Ex.P-3 to P-13.

13. Dr. M.S. Dhillon examined by her as PW1, has deposed about the dislocation of Sterno-Cleavicular Joint (Left) besides fracture distal radius (Left), fracture mandible and head injury of the appellant. He has also deposed that the appellant was still suffering problem in the neck region, function of left arm,

mild disability in her left wrist, besides a squint in her eyes as well. However, his testimony is not supported by any disability certificate or medical evidence. Had the appellant been suffering any such aforesaid injuries or permanent disablement, in that event nothing had refrained her to get her medically examined from some doctor or medical board of Government Hospital and obtain disability certificate, mentioning about her alleged constant problem in the neck region, mild disability in her left wrist, besides squint in her eyes. There is no explanation on the record that why she did not obtain any such disability certificate. Hence, on the basis of oral assertions only, she cannot be granted any more compensation than the adequately awarded by the learned Tribunal. As far as her assertions regarding employment of an attendant during her treatment and thereafter is concerned, there is again no evidence on the record to this effect. It was incumbent upon the appellant to produce or examine such person in the Court as a witness or at least, should have produced his salary certificate etc. Hence, in the absence of any such evidence, no compensation can be granted to the appellant under this head, because she has already been granted sufficient amount of ₹ 30,000/- towards pecuniary loss. In view of the discussion above, amount of ₹ 90,000/- granted by the learned Tribunal to the appellant qua her alleged injuries, does not warrant any interference.

14. As far as monthly income of deceased Devinderbir Singh Bajwa is concerned, again there is no evidence on record. Appellant Hardeep Kaur though has pleaded that he was Ex. Military personnel and had retired as Captain, but did not produce any such record, before the learned Tribunal. Even she did not produce his identity card, last pay certificate or any pass book. Even she did not produce any pensionary papers of her deceased husband. She also did not

produce any documentary evidence in the shape of jamabandi or khasra girdawari to show that her deceased husband was having ownership over some agriculture land or was cultivating the same by taking the same on lease. She also did not produce any diary containing income and expenditure account being maintained by her deceased husband against sale of milk of buffaloes allegedly kept by him. Hence, the oral assertion of appellant Hardeep Kaur that her deceased husband used to cultivate land or was running diary is liable to be ignored in toto, being not substantiated by any jamabandi, lease deed or abayana receipt etc. The learned Tribunal has rightly observed that whether the deceased husband of the appellant was getting any pension from the Army or not was a matter which requires probing, because appellant Hardeep Kaur had not claimed loss of income on that account.

15. However, the fact cannot be lost sight of that accident took place in the year 2000 in which even the wages of a casual laborer may not be less than ₹ 120/- per day i.e. ₹ 3600/- per month i.e. ₹ 43,200/- per year. There is no force in the contention of learned counsel for the appellant that a deduction of 1/4th should have been applied by the Tribunal instead of 1/3rd, because the facts and circumstances of **Rajesh and others v. Rajbir Singh and others** (supra) relied upon by him, are not identical to the facts of the present case. In that case, the deceased at the time of his death was around 33 years and was working as a Clerk in Government School under Education Department of the State of Haryana and had left behind his widow and three minor children. In these circumstances, deduction of 1/4th was applied, whereas there are no such circumstances in the instant case because it has not come on the record that whether both the sons of the deceased at the time of his death were minor or

major. It has also not been brought on record that whether at that time, they were living with the deceased or were settled permanently abroad. More so, deceased was in his advance age being 58 years old at the time of his death. Thus, in the absence of any such record, his both the sons cannot be treated as completely dependent upon him.

16. Considering the above facts, the deduction of 1/3rd adopted by the learned Tribunal in this case is quite justified. Accordingly, after deduction of 1/3rd towards personal expenses of the deceased from the aforesaid monthly income of ₹ 3600/-, arrived at by this Court, the dependency of the appellant upon him comes to ₹ 2400/- per month or ₹ 28,800/-per year. Since the deceased was 58 years of age at the time of accident, therefore, it would be appropriate to apply multiplier of 9 instead of 8 in view of the guidelines laid down in **Sarla Verma's case** (supra) and 2nd schedule of Section 163 of the Act which speaks about the application of multiplier of 9, in case of death of a person in between the age of 56 to 60 years. Accordingly, total compensation to be awarded to appellant Hardeep Kaur comes to ₹ 2,59,200/-.

17. In the instant case, no compensation qua consortium has been granted to appellant Hardeep Kaur etc. In **Sarla Verma's case** (supra), the Hon'ble Apex Court granted ₹ 10,000/-, whereas in **Vimal Kumar's case** (supra) it awarded a sum of ₹ one lakh towards consortium to each of the dependents. Hence, to meet the ends of justice, a sum of ₹ one lakh is granted to appellant Hardeep Kaur only, toward consortium on account of death of her husband, because, as discussed above, it has not been brought on record before the learned Tribunal that at the time of death of the deceased, appellants No. 2 and 3 namely Mankaran Singh Bajwa and Amarbir Singh Bajwa were living

with him or abroad and were minor or major or were dependent upon him.

18. ₹ 10,000/- granted to the claimant towards funeral expenses, does not warrant any interference, because the same is double the amount of compensation granted in **Sarla Verma's case** (supra). The benefit of **Rajesh v. Rajbir Singh** (supra) cannot be given to the petitioner qua grant of ₹ 20,000/- towards funeral expenses, because in that case, the deceased had died in the year 2007, whereas in the instant case, Devinderbir Singh Bajwa died in the year 2000 in which year, cost of essential commodities was much lesser than the year 2007.

19. Needless to mention here that in motor vehicular claim cases, broad principles laid down in the authoritative pronouncements of Hon'ble Apex Court and various High Courts, are only guiding factors. Each case has to be dealt with on its own merits having peculiar facts may not similar to any other case.

20. Interest of 9% per annum granted by the learned Tribunal does not warrant any interference, because judicial notice of the fact can be taken that after the year 2000, the rate of interest of the nationalized banks have decreased many a times and, if increased, very marginal. As on today, the rate of interest on fixed deposits is not more than 8.5% per annum.

21. As far as Cross Objection of respondent No.4-Insurance Company regarding non-adoption of any coercive method by the learned Tribunal for recording the statement of the Clerk of Licensing Authority is concerned, the same has no legs to stand, because, perusal of the impugned award shows that respondent No.4 did not ever choose to examine any such witness to prove that respondent No.1 was not having a valid and effective driving licence on the date of accident. Rather, it simply closed its evidence by tendering insurance policy

Ex. R-1. The relevant paras in this regard are reproduced as under :-

“No evidence was led by respondents No. 1 to 3. learned counsel for respondent No.4 tendered into evidence copy of insurance policy Ex.R-1.

Issue No. 3 :

The onus to prove this issue was upon the Insurance Company-respondent No.4. As has already been held above under Issue No.2, not an iota of evidence has been led by the respondent in this regard. This issue is accordingly decided against respondent No.4-Insurance Company.”

22. Hence, the arguments of learned counsel for the respondent-Insurance Company being devoid of any merits, is hereby turned down.

23. In view of the above, FAO No. 2019 of 2002 and Cross Objection of respondent No.4-Insurance Company, are hereby dismissed. FAO No. 2020 of 2002 is hereby accepted, modifying the impugned award of the learned Tribunal to the effect that the appellants are entitled to compensation of ₹ 3,59,200/- along with interest @ 9% per annum from filing of the claim petition till realization.

24. In view of the request made by learned counsel for the appellants, the share of appellants No.2 and 3 namely Mankaran Singh Bajwa and Amarbir Singh Bajwa, shall be got deposited in their bank account as they live permanently in abroad. Accordingly, appellant Hardeep Kaur, their mother and natural guardian is permitted to deposit the amount of their share in their respective bank accounts by getting issued account payee vouchers or cheque from the learned Tribunal.

(RAMENDRA JAIN)
JUDGE

17.9.2015