IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO No.1035 of 1996 (O&M)
Date of Decision: September 15, 2015.

Vijay Kumar and others

..........APPELLANT(s).

VERSUS

Gurtehal Singh and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rohan Sharma, Advocate for
Mr. Vikram Singh, Advocate
for the appellant (s).

Mr. Subhash Chander, D.A.G. Haryana
for respondents No.3 and 4.

Mr. Naveen Kapoor, Advocate
for respondent No.2.

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SURINDER GUPTA, J.

This appeal has been filed by the appellants-claimants against the award dated 18.10.1994 passed by Motor Accident Claims Tribunal, Karnal (later referred to as the Tribunal) whereby in claim petition No.250 of 1992, the appellants-claimants were allowed compensation to the tune of ₹3,84,000/- for the death of Sushma Garg (later referred to as the deceased) wife of claimant No.1 and daughter-in-law of claimants No.2 and 3 in a motor accident involving composite contributory negligence of Truck bearing registration No.PB10-B-9501 (later referred to as the offending truck) and Haryana Roadways Bus bearing registration No.HNE-1968 (later referred to as the offending bus).

As per the claimants, on 07.06.1992, the deceased was travelling in the offending bus, which met with a head on collision with offending truck in the area of Samana Bahu, District Karnal at 10.30 A.M. in which 24 person including the deceased and drivers of both the vehicles lost their lives and 26 persons were injured. Regarding this accident, FIR No.222 dated 07.06.1992 was registered at Police Station Bhutana for the offences punishable under Sections 279, 337 and 304-A of Indian Penal Code. The deceased was 38 years of age and was working as Stenographer in PWD Department, Delhi Administration, Curzon Road, New Delhi and getting a salary of ₹5000/- per month.

In the written statements filed by respondents No.1 and 2 i.e. owner-insured and insurer of the offending truck, it was alleged that the accident in question took place due to rash and negligent driving of the offending bus by its driver Gurbax Singh, who was driving the bus at a very fast speed, in a rash and negligent manner and tried to overtake a vehicle going ahead of the bus and in that process, brought the bus towards his extreme right hand side and caused the accident. Despite this, certain preliminary objections such as mis-joinder and non-joinder of necessary parties, maintainability of claim petitions, cause of action to file claim petition, were also raised.

In the written statement filed on behalf of respondents No.3 and 4, it was alleged that the accident took place on account of negligence on the part of truck driver Kaka Singh as the bus was being driven at a very moderate speed. It is also pleaded that FIR No.222 dated 7.6.1992 was registered against the truck driver on the statement of one Jai Bhagwan, a passenger in the bus to the effect that the accident had taken place on account of negligence of truck driver.

Vide the impugned award, the Tribunal had decided nine claim petitions holding that the accident took place due to composite contributory negligence of the offending truck and offending bus. The above findings are not under challenge in this appeal.

The deceased was drawing a salary of ₹3466/- as per her last pay certificate, proved on record as Ex.P1. The Tribunal assessed dependency of claimant on deceased as ₹2,000/- per month and by applying multiplier of 16, calculated the amount of compensation as ₹3,84,000/-.

Learned counsel for the appellants-claimants has argued that the Tribunal has not allowed any compensation towards future prospects. Keeping in view the age of the deceased, which was 39 years, addition of 50% was required to be made in the income of the deceased towards future prospects. He has placed reliance on observations in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121.*** The Tribunal has not allowed any amount towards funeral expenses while as per the observations in case of ***Rajesh and others Vs. Rajbir and others (supra); Vimal Kanwar and others Vs. Kishore Dan and others 2013(7) SCC 476; and Smt. Savita Vs. Binder Singh and others 2014(4) SCC 505,*** an amount of ₹25,000/- was required to be allowed towards funeral expenses. No amount has been allowed to the claimant No.1 towards loss of consortium.

Learned counsel for the respondents have supported the conclusion drawn by the Tribunal while assessing compensation of

₹3,84,000/- to claimants.

The age of the deceased was 39 years at the time of accident. As per the claimants, she was employed as Stenographer in PWD Department, Delhi Administration and was getting ₹3,466/- per month as salary as per last pay certificate Ex.P1. Perusal of the impugned award shows that after deducting personal expenses of deceased, the dependency of claimants was assessed as ₹1200/- per month + ₹800 per month by valuing her utility as a household lady.

In the case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra),*** it was observed as follows:-

> "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. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 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."

In view of the above observations, a sum equal to 50% is to be added in the income of the deceased towards future prospects.

Both the children of the deceased also died in the same accident. The deceased had left behind her husband and parents-in-law, as such, deduction of 2/3rd towards personal expenses of the deceased as applied by the Tribunal is approved as she must have been spending a share of her income on her children. The claimants are entitled to funeral expenses to the tune of ₹25,000/- and a sum of ₹1 lac for loss of consortium as per the observation in case ***Rajesh and others Vs. Rajbir and others (supra).***

In view of my above discussion, the amount of compensation to which the claimants are entitled to is calculated as per the following table:-

Sl.No.	*Heads*	*Calculation*
(i)	Salary	₹3466 per month
(ii)	50% of (i) above to be added as future prospects	(₹3466+₹1733)= ₹5199
(iii)	1/3rd of above income (ii) of the deceased	₹1733 per month
(iv)	After adding the sum by valuing utility of the deceased as a household lady	(₹800+₹1733)= ₹2533 per month
(vi)	Compensation after multiplier of 16 is applied	(₹2533X12X16)= ₹486336
(vii)	Loss of consortium	₹100000
(viii)	Funeral and transportation expenses	₹25000
Total		₹611336

This appeal has merits and is accepted. The amount of compensation to which the appellants-claimants are entitled to is enhanced from ₹3,84,000/- as awarded by the Tribunal to ₹6,11,336/-. The claimants are also allowed interest on the amount of compensation @ 7.5% per annum from the date of filing of the claim petition till the date of actual realization. The amount of compensation shall be shared equally by claimants. The amount of compensation already paid/deposited, shall be deducted out of the total compensation allowed. The appellants shall also be entitled to the costs of appeal. Counsel fee is assessed as ₹20,000/-.

(SURINDER GUPTA)
JUDGE

September 15, 2015.
Sachin M.