IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2033-2000 (O&M)
Date of Decision: May 08, 2015

Mukhtiar Kaur

.....Appellant

Versus

Padam Singh and others

......Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Ashok Jindal, Advocate
for the appellant.

Mr.Yogesh Goel, Advocate
for respondent Nos.1 and 2.

Mr.Suman Jain, Advocate
for respondent No.3.

....

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?

Naresh Kumar Sanghi, J.(Oral)

The present appeal has been directed against the award dated 01.12.1999 passed by the learned Motor Accidents Claims Tribunal, Bathinda (for brevity "learned Tribunal").

Brief facts of the case are that Gurcharan Singh, aged about 56 years, a farmer by profession, lost his life in a motor vehicular accident, which took place on 06.11.1995 due to rash or negligent act on the part of Padam Singh, driver of the canter bearing registration No.PB-10L-9566, which was owned by National Soap Mills, Ludhiana (respondent No.2), and was insured with National Insurance Company Limited (respondent No.3).

On 06.11.1995, Gurcharan Singh (since deceased) was coming back to his village from Bathinda on his tractor bearing registration No.PB-03C-8577 after its (tractor) service from a Service Station. Gurcharan Singh was driving his tractor at a normal speed and on the extreme left side of the road. Bhupinder Singh (since deceased) and one Vijay Kumar were following the said tractor on their scooter. At about 3:30 p.m., when the above said tractor and the scooter reached near the bus stand of village Balluana, a canter bearing registration No.PB-10L-9566 being driven by Padam Singh at a very fast speed, in a rash or negligent manner and without blowing horn came from the rear side and rammed into the tractor being driven by Gurcharan Singh. The tractor turned turtle. Gurcharan Singh fell down on the road and succumbed to the injuries at the spot.

The matter was reported to the police, on the basis of which FIR No.48, dated 06.11.1995 was registered at Police

Station, Sadar, Bathinda.

Smt.Mukhtiar Kaur (widow), Bhupinder Singh (son), Sukhmeet Kaur (daughter-in-law/widow of Mohanjit Singh, predeceased son of Gurcharan Singh) and Ranvijay Singh (grandson of Gurcharan Singh and son of Mohanjit Singh) filed the claim petition before the learned Tribunal.

During pendency of the claim petition, Bhupinder Singh son of Gurcharan Singh (claimant) had also died, therefore, his widow Narinder Kaur and minor children were also impleaded as legal representatives of Bhupinder Singh.

After appearance of the respondents, the replies were filed and on the basis thereof, the following issues were framed:-

> "i) Whether the claimants are the legal heirs/ dependents of Gurcharan Singh deceased? OPP
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> ii) Whether Gurcharan Singh died in an accident involving his tractor with Canter Tata No.PB-10L/9566 on 06.11.1995 in the area of village Balluana? OPP
>
> iii) Whether above said canter was being driven in a rash and negligent manner by respondent No.1 as a result of which accident took place? OPP
>
> iv) Whether the claimants are entitled to recover any amount by way of compensation if so how much and from whom out of the respondents? OPP
>
> v) Whether the application is not maintainable ? OPR

vi) Whether respondent No.1 was not holding a valid driving licence at the time of the accident took place? OPR

vii) Whether the claim petition is bad for non-joinder of owner and insurer of the tractor No.PB-03C/8577? OPR

viii) Whether claimants are estopped by their act and conduct from filing the present petition? OPR

ix) Relief."

In order to prove their case, the claimants produced Mukhtiar Kaur widow of Gurcharan Singh as AW4 and also examined Rajinder Singh as AW1, Vijay Kumar as AW2, and Dr.K.S.Brar as AW3. Report under Section 173, Cr.P.C., (Ex.A3), copies of khasra girdawaris (Exs.A4 to A13), copies of jamabandis (Exs.A14 to A16) and copy of mutation (Ex.A17) were tendered into evidence and thereafter the claimants closed their evidence.

To rebut the evidence of the appellant-claimants, the respondents examined Gurtej Singh as RW1 and Padam Singh, one of the respondents, as RW2 and thereafter closed their evidence.

The learned Tribunal decided issue No.1 in favour of the appellant-claimants holding that they (claimants) were the legal heirs of Gurcharan Singh (since deceased).

Issue Nos.2 and 3 were discussed together and it was held that the accident in question had taken place due to rash or negligent driving of canter bearing registration No.PB-10L/9566 by Padam Singh, in which Gurcharan Singh had lost his life.

After discussing the material available on record, the learned Tribunal held that Gurcharan Singh was 56 years old at the time of death and that he was a co-sharer in the land, but the measurement of the land could not be proved. It was further held that the deceased was a labourer and earning ₹2,000/- (Rupees two thousand only) per month. He was spending ₹500/- (Rupees five hundred only) on himself and leaving ₹1,500/- (Rupees fifteen hundred only) per month for his dependents. A multiplier of 6 was applied and a sum of ₹1,08,000/- (Rupees one lac and eight thousand only) along with 12% interest per annum from the date of filing of the claim petition till realization was awarded in favour of the claimants.

Issue Nos.5 to 8 were not pressed during the course of arguments by the learned counsel for the respondents and, as such, no findings were recorded in respect of the said issues.

The learned counsel for the appellant-claimants submits that the learned Tribunal has misled itself while holding that Gurcharan Singh (since deceased) was a labourer. On the basis of the documents produced, the learned Tribunal should have returned the verdict that Gurcharan Singh was the owner of the land measuring 13 killas and earning ₹5,50,000/- (Rupees five lacs and fifty thousand only) per annum. It was further submitted that even if it was concluded that Gurcharan Singh was earning ₹2,000/- (Rupees two thousand only) per month, in that eventuality also, the learned Tribunal should have added 15% of the monthly income for future prospects. He also argued that as per findings of the learned Tribunal, Gurcharan Singh (since deceased) was aged about 56 years at the time of his death and hence, the appropriate multiplier should have been 9 instead of 6. It was also pointed out that nothing has been awarded to Mukhtiar Kaur widow under the head \`Consortium'. He further argued that the learned Tribunal has also failed to award the funeral expenses of corpus of Gurcharan Singh.

On the other hand, Mr. Suman Jain, learned counsel for the Insurance Company very fairly conceded that the learned Tribunal has failed to award future prospects, funeral expenses and the amount to the widow under the head \`Consortium'. He further fairly conceded that in view of **Sarla Verma v Delhi Transport Corporation**, 2009 (3) RCR (Civil) 77, the multiplier should be of \`9'. He further submitted that the learned Tribunal has rightly held that the claimants had failed to substantiate the fact that Gurcharan Singh was holding 13 killas of land and earning ₹5,50,000/- (Rupees five lac and fifty thousand only) per annum. He after reading the findings of the learned Tribunal submitted that on the basis of the material available on record it was rightly concluded that Gurcharan Singh was to be considered as a labourer and at the time of his death the prevalent monthly income of a labourer was of ₹2,000/- (Rupees two thousand only). Learned counsel further pointed out that if the compensation is enhanced, in that eventuality the interest on the enhanced amount should be 9% and not 12% per annum.

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

So far as the death of Gurcharan Singh in a motor vehicular accident due to rash or negligent driving on the part of Padam Singh is concerned, the same is not in dispute, therefore, this Court does not deem it fit to discuss the said issue.

There appears to be substance in the submissions of the learned counsel for the appellant that the deceased was between 56-60 years and hence the appropriate multiplier should be of `9' Reference can be made to **Sarla Verma**'s case (supra). This Court does not find substance in the submissions of the learned counsel for the appellant that Gurcharan Singh was the owner of 13 killas of land since the said fact was contradicted by the documents of the Revenue Department produced by the claimants on the file. Learned counsel for the Insurance Company has rightly pointed out that Gurcharan Singh was shown to be a co-sharer of the land in the revenue papers. The learned Tribunal after scanning the whole material has rightly concluded that Gurcharan Singh could be considered as a labourer and at the prevalent time the monthly income of such a person was of ₹2,000/- (Rupees two thousand only) per month. The learned Tribunal has failed to consider the prospective monthly income of Gurcharan Singh. If we add 15% of the income as future prospects, then the monthly income of the deceased would be of ₹2,300/- (Rupees two thousand and three hundred only). By deducting 1/4th from the monthly income as his personal expenses, the dependency would come to ₹1,725/- (Rupees one thousand seven hundred and twenty five only) p.m. Therefore, Gurcharan Singh (since deceased) was contributing ₹1,725/- per month to the dependents. Hence, the annual dependency of Gurcharan Singh (since deceased) comes to ₹20,700/-(Rupees twenty thousand and seven hundred only). By applying the multiplier of 9, the total dependency would be of ₹1,86,300/- (Rupees one lac eighty six thousand and three hundred only). It is also rightly argued by the learned counsel for the appellant that the learned Tribunal has failed to award appropriate amount to the widow of Gurcharan Singh for consortium. Therefore ₹50,000/- (Rupees fifty thousand only) can be awarded under the said head. The claimants have not been awarded the funeral expenses (last rites). This Court deems appropriate to award ₹15,000/- (Rupees fifteen thousand only) for funeral expenses. In this manner, the total figure comes to ₹2,51,300/- (Rupees two lacs fifty one thousand and three hundred only), as per calculations made in the following table:

Sr. No.	Heads	% / fraction / multiplier applied	Detail of calculation	Amount (in ₹)
(A)	(B)	(C)	(D)	(E)
1	Income of the deceased		Per month	2000
2	Less income tax, if payable		Per month	0
3	Net income of the deceased		Per month	2000
4	Future prospects	15%	of 3(E)	300
5	Monthly income after adding future prospects		3(E) + 4(E)	2300

6	Income from Agriculture		Per month	0
7	Total		5(E) + 6(E)	2300
8	Monthly personal expenses of the deceased	1/4	of 7(E)	575
9	Net dependency (per month)		7(E) -8(E)	1725
10	Multiplier to be applied	9		
11	Compensation after applying the multiplier		9(E) X 12 X 10(C)	186300
12	Loss of consortium			50000
13	Love, Care and Affection			0
14	Funeral expenses			15000
15	Any other expenses to be specified			0
	Total Compensation awarded			251300

The appellant would be entitled to interest @ 9% per annum on the enhanced amount of compensation. The enhanced amount shall be paid by respondent No.3-Insurance Company and be disbursed to the appellant as per the directions of the learned Tribunal.

The appeal is partly allowed.

May 08, 2015 **(NARESH KUMAR SANGHI)**
seema/meenu **JUDGE**