IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1501 of 2001(O&M)

Date of Decision: September 4 , 2015.

Nirmal Singh and others

...... APPELLANT (s)

Versus

Sher Singh and others

...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Sonal Datta, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate
for respondent No.3 – Insurance company.

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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?

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LISA GILL, J.

Appellants-claimants pray for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as, the 'Tribunal') vide impugned award dated 09.10.2000 on account of death of Mohinder Kaur. Appellant No.1 is the husband and appellants No.2 to 3 are the children of deceased – Mohinder Kaur.

Facts of the case as revealed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') are that, Mohinder Kaur wife of appellant No.1 – Nirmal Singh, who was a teacher in Government Model School, Bhago Majra was proceeding for her duty on a bicycle on 03.09.1997 at 8.00 a.m. She was going on left side of the road from village Khanpur towards Morinda. When she reached near the bus stand of village Khanpur, an Ambassador car No. CHA-6900 driven in a rash and negligent manner by respondent No.1 – Sher Singh, hit her from behind. As a result of which, she fell on the road and sustained injuries. Driver of the car fled from the spot. She was rushed to the Civil Hospital, Kharar and then taken to PGI where she succumbed to her injuries two days later.

Learned Tribunal on consideration of the evidence on record concluded that the accident had taken place due to the rash and negligent driving of offending Ambassador car No. CHA-6900 by its driver. Deceased was admittedly a school teacher in the Government Model School, Bhago Majra. She was receiving a salary of ₹7,690/- per month at the time of her death. Learned Tribunal made deduction of ₹2,563/- i.e., 1/3rd of the income on account of personal expenses. Annual Dependancy worked out to be ₹61,200/- (5100x12) per annum. On applying a multiplier of 11, compensation on account of loss of dependancy was worked out to be ₹6,73,000/- (61,200x11). However, a sum of ₹3,38,400/- was deducted on account of pension payable to the claimants. A consolidated sum of ₹15,200/- was awarded on account of loss of affection, expenses incurred on medical treatment and funeral etc.

Learned counsel for the appellants while relying on judgment of Hon'ble Supreme Court in **Vimal Kanwar and others v. Kishore Dan and others**, ***(2013) 7 SCC 476*** submits that deduction on account of pension received by the claimants is not justified. Claimants are also entitled to enhanced compensation on other counts. It is further submitted that there is error in the calculation made by the Tribunal.

Having heard learned counsel for the parties, I find that the deduction on account of pension payable to the claimants has been wrongly made by the Tribunal. No such deduction is permissible while determining compensation under the Act. It has been specifically held by the Hon'ble Supreme Court in Vimal Kanwar's case (supra) as well as number of other decisions that amounts such as provident fund, pension, life insurance receivable by the claimants on account of the victim's death do not come within the periphery of the Act to be termed as pecuniary advantages liable for deduction.

There is no dispute regarding the income of deceased being ₹7,690/- per month. Applying a deduction of 1/3rd for personal expenses as laid down by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil) 77***, dependancy is worked out to be ₹5,127/- per month i.e., ₹61,524/- (5,127x12) per annum. Applying a multiplier of 13, the deceased being 48 years old at the time of accident, loss of dependancy is assessed at ₹7,99,812/- (61,524x13).

Appellant No.1 is entitled to ₹1,00,000/- on account loss of consortium. Children of the deceased i.e., appellants No.2 to 4 are entitled to ₹1,50,000/- (₹50,000/- each) on account of loss of love and affection. Appellants-claimants are also entitled to ₹25,000/- on account of funeral expenses. Appellants-claimants are, thus, entitled to enhanced amount of compensation of ₹10,74,812/-, detail of which is as under:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Loss of dependancy (₹5127x12x13)	₹7,99,812/-
2.	Loss of consortium	₹1,00,000/-
3.	Loss of love and affection ₹50,000/- to each child	₹1,50,000/-
4.	Funeral expenses	₹25,000/-
	Grand Total	₹10,74,812/-

Amount of compensation already awarded to the claimants by the Tribunal shall stand deducted from the amount calculated as above. Claimants shall be entitled to interest on the enhanced amount of compensation at the rate of 7.5% per annum from the date of filing of the petition till realization.

With the abovesaid modification, this appeal is disposed of.

(LISA GILL)
JUDGE

September 4 , 2015.
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