IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision:28.01.2015.

(1) FAO No.1314 of 2002

Shiv Raj and another … Appellants.

Versus

Rajender and others … Respondents.

(2) FAO No.1315 of 2002

Nisha Rani and others … Appellants.

Versus

Rajender and others …Respondents.

Present: Mr. Neeraj Shukla, Advocate
for the appellants.

Mr. B. S. Tewatia, Advocate
for respondents No.1 and 2.

Mr. R. C. Kapoor, Advocate for respondent No.3-
M/s United India Insurance Company Ltd.

***

S.S. Saron, J.

This order will dispose of FAO No.1314 of 2002 and FAO No.1315 of 2002, as these arise out of the same judgment and award dated 05.04.1999 passed by the learned Motor Accident Claims Tribunal ('Tribunal' - for short), Faridabad.

The paper-books in the cases were burnt in a fire that occurred in the High Court premises. It has been reconstructed by the office by photocopying the paper book from the salvaged records of the partially burnt case. Besides, learned counsel appearing for the United Insurance Company Ltd. ('Insurance Company' - for short) (respondent No.3) has submitted a photo stat copy of the certified copy of the impugned award. Page 14 of the same, it is stated, was missing. The evidence and other records are not available. The facts are taken from the judgment and award passed by the learned Tribunal at Faridabad.

Learned counsel appearing for the respective parties have been heard at length and the impugned award passed by the learned Tribunal at Faridabad has been perused. The claimants/appellants claim higher compensation from the amount that has been awarded by the learned Tribunal.

An accident occurred between a 'Matador' vehicle with registration No.DL-IC-B-7009 and an 'Eicher' tractor with registration No.HR-52-1039 on the Banchari turn, G.T. Road within the area of Police Station Hodal at about 6.00 pm on 14.10.1997. Rajender (respondent No.1 in both the appeals) was driving the 'Eicher' tractor. According to the claimants/appellants, the accident occurred due to the rash and negligent driving of Rajender (respondent No.1), the driver of the tractor. Puran Lal, Kamlesh (both deceased in the case), Kalawati (PW-7), Ranvir (PW-6), Umesh and Bimla (PW-3) were travelling in the 'Matador' vehicle registration No.DL-IC-B-7009. They were proceeding to Goverdhan-ji-Prikarma. The 'Matador' vehicle reached near the turn of village Banchari on the G.T. Road at about 6.00 pm on 14.10.1997. At that time, an 'Eicher' tractor No.HR-52-1039 came from the side of Hodal. It was being driven at a high speed in a rash and negligent manner by Rajender (respondent No.1). The tractor struck against the 'Matador' vehicle due to which all who were travelling in it suffered injuries. Kamlesh died at the spot. The injured were taken for first aid to the Civil

Hospital at Hodal. Puran Lal was taken to B.K. Hospital, Faridabad where he died. FIR in the case (photocopy Ex.PE) was registered on the statement of Bimla (PW-3). Postmortem examination on the dead bodies of Kamlesh and Puran were conducted. Photocopies of their reports Ex.PF and Ex.PG respectively were tendered in evidence. The injured were medico legally examined and treated.

A petition for grant of compensation for the demise of Puran Lal in a motor vehicle accident was filed by his widow Nisha Rani; his minor son Krishan Kumar aged about 1 year; his father Ishwar Chand and mother Smt. Murti Devi. It was stated on their behalf that Puran Lal (deceased) was of the age of 25 years at the time of his death. He was running a 'Kariyana' (grocery) shop; besides, he was also running an 'Atta Chakki' (Flour Mill). He earned Rs.3500/- per month. It was alleged by the claimants that they were fully dependent upon him. Besides, the accident occurred due to the rash and negligent driving of Rajender (respondent No.1), the driver of the offending tractor. They claimed compensation of Rs.8.00 lacs.

The driver of the tractor Rajender (respondent No.1) as also the owners of the tractor namely Kishan Singh and Fateh Singh sons of Hariya (respondent No.2) contested the petition. They filed a joint written statement denying the allegations of the claimants/ appellants. According to them, no accident had taken place with the tractor. A false FIR had been lodged in collusion with the local police and they had been falsely implicated.

The Insurance Company (respondent No.3) filed a separate written statement. According to it, the accident had not occurred due to the rash and negligent driving of the tractor driver but it had taken place due to the rash and negligent driving of the driver of 'Matador' vehicle and in any case it had not taken place with the tractor in question. It was also stated that the owner and insurer of the 'Matador' vehicle were a necessary party. The other allegations were denied. It was stated that the claimants were not entitled to any compensation. Besides, Rajender (respondent No.1), it was stated, did not have a valid driving license to drive the vehicle and was not driving it under the permission and control of respondent No.2 i.e. Krishan Singh and Fateh Singh sons of Hariya. Therefore, it was not liable to pay any compensation.

The other claim petition was filed by Shiv Raj, husband of the deceased Kamlesh and Krishan Kumar, the minor son of the deceased Kamlesh. They claimed that Kamlesh (deceased) was aged 32 years at the time of her death in the accident. She was earning Rs.3000/- per month by running a milk dairy. The accident occurred due to the rash and negligent driving of Rajender (respondent No.1), the tractor driver of tractor No.HR-52-1039. Both the claimants, it is stated, were dependent on her. Therefore, they claimed compensation of Rs.5.00 lacs for her death.

The driver, owners and Insurance Company (respondents No.1 to 3) contested the petition by filing written statements. They took identical pleas as were taken in Nisha Rani's case (supra). Some of the injured namely Umesh, Smt. Kalawati and Ranvir also filed claim petitions claiming compensation for the injuries they suffered in the aforesaid motor accident. However, the compensations granted to them are not subject matter of the present appeal.

The learned Tribunal at Faridabad framed the following issues:-

1. "Whether the accident on 14.10.97 at Banchari Mor in the area of Hodal at 6.00 pm on G.T. Road took place due to rash or negligent driving of respondent No.1 Rajender driver of tractor No.HR-52-1039? OPP
2. If issue No.1 is proved, whether the petitioners are entitled to compensation, if so to what amount and from whom? OPP
3. Whether the respondent No.1 was not having valid driving licence to drive the vehicle and was not driving it under the permission, employment, authority and control of insured and as such respondent No.3 is not liable to pay compensation? OPR
4. Relief."

The learned Tribunal held that Rajender (respondent No.1), driver of the tractor, was solely responsible for the accident and the accident in question at Banchari Village near Hodal on the GT Road on 14.10.1997 at 6.00 pm had occurred due to his rash and negligent driving. On account of the accident, it was said that the occupants of the 'Matador' vehicle received serious injuries and Kamlesh died at the spot while Puran Lal succumbed to his injuries later on. The issue No.1 was decided in favour of the claimants/ appellants. There is no challenge by the respondents in the claim petitions to the said findings of the learned Tribunal at Faridabad as regards the manner in which the accident had occurred and the fact that the accident occurred due to the rash and negligent driving of Rajender (respondent No.1), the driver of the offending tractor.

As regards the entitlement of compensation to the claimants Nisha Rani, Krishan Kumar minor, Ishwar Chand Gupta and Smt. Murti Devi i.e. the wife, son, father and mother respectively of Puran Lal (deceased), the learned Tribunal considered the evidence and material on record. Ishwar Chand (PW-5) stated that Puran Lal (deceased) was his son and that Nisha Rani, claimant was the wife of Puran Lal; besides, Krishan Kumar was the son of Nisha Rani from the loins of Puran Lal. Smt. Murti claimant was the mother of Puran Lal and was his (Ishwar Chand's) wife. It was submitted that Puran Lal died in a road accident when he was travelling in a 'Matador' vehicle for performing 'Prikarama' of 'Goverdhan-ji'. He was stated to be aged 22/23 years. He was running a 'kariyana' (grocery) shop and earned Rs.3000/- to Rs.3500/- per month. He used to hand over the entire amount that he earned towards household expenses. In cross examination it was stated that they had a small 'kariyana' (grocery) shop where the articles were of the value of Rs.2000/- to Rs.3000/-. He (PW-5) and his son, it is stated, both used to sit at the shop. After the death of his son, he (PW-5) was running the shop and he earned Rs.100/- less than that they earlier used to earn.

The learned Tribunal referred to the postmortem report (Ex.PG) of Puran Lal in which his age was mentioned as 26 years and that he died in a road accident on 14.10.1997. Puran Lal, was running a 'kariyana' (grocery) shop along with his father Ishwar Chand (PW-5). There was, however, no evidence that he was running any 'Atta Chakki' (Flour Mill). Ishwar Chand (PW-5) stated that they had articles of the value of Rs.2000/- to Rs.3000/- at their shop. In the circumstances, it was held to be difficult to believe that a 'kariyana' shop which had articles worth Rs.2000/- to Rs.3000/- could be earning income of Rs.3000/- to Rs.3500/- per month.

Besides, it was noticed that Ishwar Chand (PW-5) and Puran Lal (deceased) both used to sit at the shop. Therefore, it was presumed that the income of Puran Lal was not more than Rs.1000/- per month. It was held that he (Puran Lal) must be spending 1/3rd of the income on himself. In this manner, the loss to his estate was assessed at Rs.650/- per month i.e. Rs.7,800/- per annum. Puran Lal was aged 26 years. He had left behind his young widow, minor son aged one year; besides, his old parents. A multiplier of 16 was applied to the annual income of Rs.7800/- and compensation payable was assessed at Rs.1,24,800/- to which the claimants/appellants were held entitled to get in equal share from the respondents who were held to make the payment of the amount jointly and severally.

As regards the compensation for the death of Kamlesh, wife of Shiv Raj (PW-4), it was noticed that according to Shiv Raj (PW-4) she was aged 32 years at the time of her death in the accident. She was a household lady and was stated to be running a milk dairy and that she earned Rs.3000/- per month. Krishan Kumar, minor was the son of Shiv Raj (PW-4) and Kamlesh (deceased). He was aged 15 years at the time of death of Kamlesh. In cross examination, Shiv Raj (PW-4), the husband of the deceased Kamlesh, stated that he had closed the dairy as there was no one to look after the buffaloes. At that time, he had kept only a cow and earlier he had eight buffaloes. He (PW-4) and his wife (Kamlesh) both were running the dairy and he used to locally supply milk. He, however, did not have any account of the dairy business.

The learned Tribunal at Faridabad observed that Shiv Raj (PW-4) admittedly had not got any account of the dairy business. His (PW-4's) statement that the dairy had been closed as there was no one to look after the buffaloes was held to be unbelievable as in the beginning of his statement he had stated that he was doing business of milk dairy. Therefore, it was presumed that Shiv Raj (PW-4) was running a dairy and that Smt. Kamlesh was only a housewife and helped him in running the dairy. Her income on account of rendering services, it was held at best could be assessed at Rs.600/-per month. It was observed that she must be spending 1/3rd of the income on herself. Therefore, loss to the estate was assessed at Rs.400/- per month or Rs.4800/- per annum. According to her postmortem report (Ex.PM), she had died in an accident with a tractor and was aged about 30 years. She had left behind her husband (Shiv Raj), minor son (Krishan Kumar) aged about 15 years. A multiplier of 16 was applied and the total amount of compensation was assessed at Rs.76,800/- to which the claimants Shiv Raj and his minor son Krishan were held entitled to from the respondents in equal share. The respondents were held liable to make the payment of the said amount jointly and severally.

FAO No.1314 of 2002 has been filed by Shiv Raj and Kirshan Kumar through his father Shiv Raj, the husband and minor son respectively of the deceased Kamlesh. FAO No.1315 of 2002 has been filed by Nisha Rani, Krishan Kumar (minor) through his mother Nisha Rani, Ishwar Chand Gupta and Smt. Murti Devi, who are the widow, minor son, father and mother respectively of the deceased Puran Lal. The claimants/appellants in both the appeals claim more and higher compensation.

The factual position is not much in dispute as regards the loss to the estate of Puran Lal, whose income was assessed at Rs.1000/- per month. It was held that he must be spending 1/3rd of the income on himself. The loss to his estate was assessed at Rs.650/- per month or Rs.7800/- per annum; besides, he was aged 26 years.

In Smt. Sarla Verma v. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77 (S.C.), it was *inter alia* held by Hon'ble the Supreme Court that for grant of compensation to the legal heirs of a deceased in a motor vehicle accident, certain points were to be considered while deducting towards personal and living expenses of the deceased from his income. It was inter alia said that where deceased was married and number of dependent members was two to three, a deduction of $1/3^{rd}$ from the income was to be made. Besides, where the number of dependent family members was four to six, the deduction is to be $1/4^{th}$ of his income towards his personal and living expenses. The multiplier to be applied was with reference to the age of the deceased. For the age group of 26 to 30 years, it was said that a multiplier of 17 should be applied.

The dependents of Puran Lal are his widow, minor son and also parents. They are four in number and for dependents numbering between four to six a deduction of $1/4^{th}$ of the income is to be made towards personal and living expenses of the deceased. The learned Tribunal at Faridabad, however, made deduction of $1/3^{rd}$ of his income and assessed his income at Rs.650/- per month or Rs.7800/- per annum. The total income of Puran Lal assessed by the learned Tribunal to be not more than Rs.1000/- per month and from this a deduction of $1/4^{th}$ of the income towards his personal expenses is to be made, which would work out to Rs.750/- per month or Rs.9000/- per annum. Besides, multiplier of 17 instead of 16 is liable to be applied. Therefore, the amount of compensation is to be assessed by applying the multiplier of 17 to the annual income of Rs.9000/-, which works out to Rs.1,53,000/-. The learned Tribunal has awarded compensation of Rs.1,24,800/- which is liable to be enhanced to Rs.1,53,000/- and the balance amount, if the amount awarded by the learned Tribunal has not been paid, is liable to be paid.

As regards the compensation payable for the demise of Smt. Kamlesh, as already noticed, the learned Tribunal assessed her income for rendering services for running the milk dairy at Rs.600/- per month. It was held that she must be spending 1/3rd of the income on herself. Therefore, loss to her estate was assessed at Rs.400/- per month or Rs.4800/- per annum. According to the postmortem report (Ex.PF), she was aged 30 years. There were two dependents on her i.e. Shiv Raj, her husband and Krishan Kumar, her minor son. In terms of the judgment of Hon'ble the Supreme Court in Smt. Sarla Verma v. Delhi Transport Corporation and another, (supra), where deceased was married and number of dependent members was two to three, a deduction of 1/3rd from the income was to be made towards his personal and living expenses. Besides, the multiplier to be applied was with reference to the age of the deceased. For the age group of 26 to 30 years, it was said that a multiplier of 17 should be applied.

The dependents of Kamlesh, as already noticed, are two and, therefore, a deduction of 1/3rd from her income is to be made, which has been made by the learned Tribunal at Faridabad while assessing her income at Rs.400/- per month or Rs.4800/- per annum. However, the multiplier of 17 instead of 16 is liable to be applied. Therefore, the amount of compensation is to be assessed by applying the multiplier of 17 to the annual income of Rs.4800/-, which works out to Rs.81,600/-. The learned Tribunal has awarded compensation of Rs.76,800/- which is liable to be enhanced to Rs.81,600/-.

Apart from the compensation payable for the loss to the estate of Puran Lal and Kamlesh, the deceased in the case, payment of non-pecuniary damages for loss of consortium, funeral expenses and for the loss of love and affection is also to be considered.

In Rajesh and others v. Rajbir Singh (2013) 9 SCC 54, Hon'ble the Supreme Court said that the practice of awarding compensation under conventional heads: loss of consortium to the spouse; loss of love, care and guidance to children and funeral expenses is to be revisited. It was noted that the sum of Rs.2500/- to Rs.10000/- was fixed several decades ago and having regard to inflation factor, the same needed to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of Rs.5000/- to Rs.10,000/-. In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The concept of non-pecuniary head of damages, it was said, had not been properly understood by our Courts. The loss of companionship, love, care and protection etc., the spouse was entitled to get and has to be compensated appropriately. It was said that the concept of non-pecuniary damage for loss of consortium was one of the major heads for award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts had also recognized the rights of spouse to get compensation even during the period of temporary disablement. By loss of consortium, it was said that the Courts had made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs were otherwise adequately compensated for the pecuniary loss, it was held that it would not be proper to award a major amount under the said head.

This Court in Subhash Chand v. Satya Rani, 2014 ACJ 2362 in a case where accident had occurred on 10.05.1995 said that although recently there had been attempts to revisit the case of Sarla Verma (supra) to allow for a higher compensation for loss of consortium and loss of love and affection. However, considering the fact that the accident had taken place in 1995 the conventional head as was normally understood awarded an amount of Rs.10,000/- for loss of consortium and Rs.5000/- for each of the minor children for loss of love and affection and Rs.5000/- for funeral expenses.

In the present case, the accident had occurred in 1997; therefore, it would be just and proper to award a sum of Rs.20,000/- for loss of consortium and Rs.10,000/- for funeral expenses and Rs.10,000/- for loss of love and affection to the minor children.

Nisha Rani, widow of Puran Lal (deceased) shall, therefore, also be entitled to Rs.20,000/- as loss of consortium. Besides, Shiv Raj, husband of Kamlesh (deceased) shall also be entitled to Rs.20,000/- towards loss of consortium. Besides, the minor children namely Master Krishan Kumar minor son of Puran Lal and Krishan Kumar minor son of Kamlesh wife of Shiv Raj shall each be entitled to Rs.10,000/- for the loss of love and affection. The claimants Smt. Nisha Rani, Master Krishan, Ishwar Chand and Smt. Murti Devi, the widow, son, father and mother respectively of deceased Puran Lal shall be entitled to Rs.10,000/- for funeral expenses. Besides, the claimants Shiv Raj and Krishan Kumar son of Kamlesh wife of Shiv Raj shall also be entitled to Rs.10,000/- for funeral expenses.

In this manner the claimants Smt. Nisha Rani, Master Krishan, Ishwar Chand and Smt. Murti Devi, the widow, son, father and mother respectively of deceased Puran Lal shall be entitled to Rs.1,53,000/- minus the amount if already paid under the order of the learned Tribunal and to this a sum of Rs.10,000/- towards funeral expenses shall be paid. The learned Tribunal has held the amount to be payable by the respondents jointly and severally. Therefore, the said amount shall be payable to the said claimants; however, an additional amount of Rs.20,000/- shall be paid to Nisha Rani towards loss of consortium and Rs.10,000/- to Master Krishan Kumar son of Puran Lal towards loss of love and affection.

Similarly, the claimants Shiv Raj and Krishan Kumar minor son of Shiv Raj shall be entitled to Rs.81,600/- minus the amount if already paid under the orders of the learned Tribunal. Besides, a sum of Rs.10,000/- shall be paid towards funeral expenses. In addition Shiv Raj shall be paid Rs.20,000/- towards loss of consortium and Krishan Kumar minor son of Kamlesh wife of Shiv Raj shall be paid Rs.10,000/- towards love and affection.

Issue No.3 was framed by the learned Tribunal as regards Rajender Singh (respondent No.1), the driver of the offending tractor, having a valid driving license to drive the vehicle and also whether he was not driving it under the permission, employment authority and control of the insured. The original driving license Ex.R1 was placed on record by respondents No.1 and 2. It showed that Rajender Singh (respondent No.1) was having a valid driving license issued by the Licensing Authority, Palwal to drive motorcycle, scooter, and tractor. The license was valid upto 08.10.2002. Therefore, it was held that at the time of accident i.e. on 14.10.1997, Rajender Singh (respondent No.1) had a valid driving license and the issue was decided in favour of the claimants and against the Insurance Company (respondent No.3). There is no challenge to the said finding of the learned Tribunal at Faridabad. Consequently, the finding on issue No.3 is to be affirmed.

In the circumstances, the appeals are partly allowed and the compensation awarded to Smt. Nisha Rani, Master Krishan Kumar, Ishwar Chand Gupta and Smt. Murti Devi (appellants in FAO No.1315 of 2002) is enhanced from Rs.1,24,800/- to Rs.1,53,000/-. The claimants would be entitled to get this amount, as held by the learned Tribunal in equal shares from the respondents who would be liable to make the payment of the said amount jointly and severally. The payment of balance amount if the initial amount of Rs.1,24,800/- has been made by the Insurance Company (respondent No.3) shall be made. Besides, they shall also be paid a sum of Rs.10,000/- towards funeral expenses. In addition, Smt. Nisha Rani shall be paid Rs.20,000/- towards loss of consortium and Rs.10,000/- shall be paid to Master Krishan Kumar son of Puran Lal towards loss of love and affection; besides, the compensation awarded to Shiv Raj and his minor son Krishan Kumar (appellants in FAO No.1314 of 2002) is enhanced from Rs.76,800/- to Rs.81,600/-. The said claimants would be entitled to get this amount, as held by the learned Tribunal in equal shares from the respondents who would be liable to make the payment of the said amount jointly and severally. The payment of balance amount if the initial amount of Rs.76,800/- has been made by the Insurance Company (respondent No.3) shall be made. Besides, they shall also be paid a sum of Rs.10,000/- towards funeral expenses. In addition, Shiv Raj shall be paid Rs.20,000/- towards loss of consortium and Rs.10,000/- shall be paid to Krishan Kumar son of Kamlesh wife of Shiv Raj towards loss of love and affection.

(S.S. Saron)
Judge

28.01.2015
Amit/A.Kaundal