IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 2213 OF 2003 (O&M)
DECIDED ON : 26.03.2015

Neeta and others
...Appellants

versus

Banarasi Dass and others
...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Sandeep Goyal, Advocate,
for the appellants.

Mr. R. N. Singal, Advocate,
for respondent No.3.

K. C. PURI, J. (ORAL)

This is an appeal directed by the widow, minor daughter and parents of Rampal who died in a motor vehicular accident.

The allegations made in the claim petition are that on 02.10.2000, deceased Rampal was travelling in a tractor bearing registration No. UP-12D-4331 (hereinafter referred to as "the offending tractor"). He was coming from his village towards Karnal. The tractor was being driven by respondent No.1 rashly and negligently and when it reached near canal colony, Meerut

Road, Karnal, then at about 3.00/3.15 PM, its driver took a sharp turn on account of which he lost his control over the tractor as the speed was very high and as a result thereof, the tractor turned turtle and the deceased struck against it and sustained multiple injuries due to which he succumbed at the spot. A sum of ₹10 lacs was claimed as compensation by the claimant/ appellants.

Respondents No.1, 2 and 2-A filed their written statement admitting the factum of accident but have pleaded that the accident had taken place on account of negligence of the deceased himself as he suddenly struck against the tractor in order to save himself from the incoming truck.

Respondent No.3-Insurance Company denied the factum of accident and has pleaded that the tractor has been involved just to extract compensation. It is further pleaded that driver of the offending tractor was not having a valid and effective driving license.

From the pleadings of the parties, following issues were framed :-

1) Whether the deceased Ram Pal had died in a road side vehicular accident which had occurred on 02.10.2000 in the area of police station Sadar, Karnal on account of rash and negligent driving of tractor No. UP-12-D-4331 by respondent No.1 Banarsi Dass ? OPP

2) If Issue No.1 is proved, whether the claimants are entitled to be compensated for the death of Ram Pal. If so, to what extent and by whom ? OPP

3) Whether the respondent No.1 was not holding a valid licence at the time of accident. If so, its effect ? OPR3

4) Relief.

Learned Tribunal returned the findings on all the issues in favour of the claimants and partly accepted the claim petition. A sum of ₹2,95,100/- was awarded as compensation on account of death of Rampal in a motor vehicular accident.

The claimants have preferred the present appeal for enhancement whereas respondent-Insurance Company has not preferred any appeal.

Learned Tribunal has taken the income of deceased as ₹2000/- per month as a daily wager and it was observed by the Tribunal that the deceased must be spending ₹600/- per month as personal expenses and as such, the dependency of the claimants was taken as ₹1400/- per month. The yearly dependency was calculated as ₹16,800/- (1400x12). The age of deceased was taken as 23 years and as such, the multiplier of 17 was applied. In this manner, a sum of Rs.2,85,600/- (16,800x17) was awarded as compensation. Claimant No.1 was held entitled to claim ₹5000/- for loss and consortium being widow of the deceased. The remaining claimants were held entitled to claim ₹4500/- as funeral expenses and for the loss of estate. In this manner, a sum of ₹2,95,100/- was granted as compensation.

Learned counsel for the appellants has submitted that the income of deceased has been taken on lower side and it should be not less than ₹3000/- per month.

I have carefully considered the said submission but do not find any force in the same.'

The Tribunal has rightly taken the income of deceased as ₹2000/- per month in the year 2002.

The next contention raised by learned counsel for the appellant is that the future prospects have not been taken into account. It is further contended that the amount granted in respect of loss of estate and consortium is on lower side. It is further contended that no amount has been granted in respect of loss of love and affection and the amount granted in respect of funeral expenses is also on lower side.

Learned counsel for the appellant has further submitted that according to authority ***"Sarla Verma and others vs. Delhi Transport Corporation and anr." 2009 (3) RCR (Civil) 77,*** the multiplier for the age group of 15-25 should have been 18.

Learned counsel for respondent-Insurance Company has submitted that the matter regarding grant of future prospects is pending before the Hon'ble Apex Court in ***SLP No.***

8058 of 2014 titled as, ***"National Insurance Company Limited vs. Pushpa and others"***. So, no amount can be granted in respect of future prospects. He has further submitted that the amount has been granted keeping in view the price index in the year 2002. It is further contended that the Insurance Company is not liable to pay the amount in view of authority ***"The Oriental Insurance Company Limited vs. Ishwanti and others" 2012 (3) PLR 840, "IFFCO TOKIO General Insurance Company Limited vs. Ramesh Rani and others" 2014 (3) PLR 46*** and ***"New India Assurance Company Limited vs. Sohan Lal and others" 2013 (1) Law Herald (P&H) 819***.

In rebuttal, learned counsel for the appellant has submitted that the point of gratuitous passenger has been taken for the first time in the appeal. The Insurance Company has not directed any appeal and as such, it is estopped from taking the said plea.

I have considered the submissions made by both the parties.

The first and foremost issue which requires consideration is that whether the Insurance Company can take a plea that since the deceased was travelling in a tractor,as such, the Insurance Company is not liable to pay the amount, for the first time in appeal. From the pleadings of parties, it is revealed that such plea has not been taken in the written statement and as such, the Insurance Company cannot take this plea for the first time in appeal. Moreover, when no appeal or cross-objections have been preferred by the Insurance Company. The Insurance Company cannot take the benefit of ***The Oriental Insurance Company Limited's case (supra)*** and ***IFFCO TOKIO General Insurance Company Limited's case (supra).*** Moreover, a labourer can travel in a tractor to pursue his agricultural operations.

The other point for consideration is that whether future prospects should be taken into account. The said point has been decided by this court in ***FAO No. 3903 of 2012*** titled as ***"Balbir Kaur & others v. State of Haryana" decided on 15.01.2014*** after going through the authority ***"Rajesh and others v. Rajbir Singh and others" 2012(2) Apex Court Judgments 245(SC),*** this court came to the conclusion that law laid down in ***Rajesh and others' case (supra)*** is more appropriate and has followed the said authority. Even the Hon'ble Apex Court in authorities ***"Smt.Neeta w/o Kallappa Kadolkar and others v. The Div. Manager, MSRTC, Kohlapur 2015 (1) RCR (Civil) 625*** and ***"Kanhsingh and another vs. Tukaram and others" 2015 (1) Law Herald 220***, has held that even in case of self-employed, future prospects have to be taken into consideration. Otherwise also, it is a welfare legislation and the benefit tilts in favour of the injured/claimant. So, I have no hesitation in holding that in view of ***Rajesh and others' case***

(supra), the claimants are entitled to future prospects.

The income of deceased has been taken as ₹2000/- per month. So by adding future prospects to the extent of 50%, the income of deceased can be taken as ₹3000/- per month. In this case, there are four claimants. So, in view of authority ***"Sarla Verma and others vs. Delhi Transport Corporation and anr." 2009 (3) RCR (Civil) 77,*** the deduction has to be made as $1/4^{th}$ in respect of personal expenses. So, after deducting $1/4^{th}$, the dependency comes to ₹2250/- per month. The yearly dependency comes to ₹27,000/- (2250x12). The multiplier applicable at the age of 23, according to ***Sarla Verma and others' case (supra)*** is 18. So by applying the multiplier of 18, the amount comes to ₹4,86,000/-. The Tribunal has allowed a sum of ₹5000/- in respect of loss of consortium. That amount is on lower side and has to be taken into account in view of the price index prevailing in the year 2002. So, the claimant No.1 is held entitled to ₹50,000/- in respect of loss of consortium. The claimants are also held entitle to claim ₹50,000/- in respect of loss of love and affection. Another sum of ₹15,000/- stands allowed in respect of funeral expenses, transportation etc. In this manner, the claimants are held entitle to claim ₹6,01,000/-. In this manner, the amount of compensation stands enhanced by ₹3,05,900/- say ₹3,06,000/-. Out of the said amount, the claimant-widow shall be entitled to claim ₹1,50,000/- and the remaining amount shall be equally shared by the other claimants.

The share of the minor shall be deposited in the shape of FDR with some nationalised bank so that it can get maximum rate of interest. The claimant-widow may apply for the interest on the FDR belonging to the minor for her upbringing, if she so desire. The liability to pay the amount shall remain the same as ordered by the Tribunal. The claimants are also held entitled to interest @ 7.5% per annum from the date of application till its realization, in view of ***Rajesh and others' case (supra).***

Disposed of.

MARCH 26, 2015 **(K. C. PURI)**
shalini **JUDGE**