IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2321-2005

Date of Decision: March 31, 2015

Amrit Kaur @ Guddi and others

...Appellants

Versus

Pritam Lal and another

…Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Sagar Aggarwal, Advocate,
for the appellants.

Mr. Ashish Gupta, Advocate,
for respondent No. 1.

Mr. D.K. Dogra, Advocate,
for respondent No. 2.

NARESH KUMAR SANGHI, J (Oral)

The present appeal has been filed by widow, two minor sons and parents of Rajbir (since deceased), for enhancement of compensation awarded by learned Motor

Accidents Claims Tribunal, Karnal (for brevity, 'the Tribunal'), vide impugned award dated 22.2.2005.

Learned counsel for the appellants submits that at the time of his death, Rajbir was aged about 30 years; he was working as a Salesman with M/s Tractor World, Karnal, and earning about Rs. 10,000/- (Rupees ten thousand) per month; there were five dependents, who are the appellants before this Court; learned Tribunal has wrongly calculated the monthly income of the deceased to the tune of Rs. 5,100/- (Rupees five thousand and one hundred); in view of large number of dependents, the deduction on account of monthly personal expenses of the deceased should have been 1/4th instead of 1/3rd of the income assessed; learned Tribunal has failed to add future prospects of Rajbir (since deceased) @ 50% of the annual income; Rs. 5,000/- (Rupees five thousand), awarded under the head 'consortium', was on lower side and, in fact, it should have been Rs. 1,00,000/- (Rupees one lac); except for the widow, learned Tribunal has not awarded a single penny to remaining claimant/appellants under the head 'love and affection'; learned Tribunal has also awarded a very meagre amount of Rs. 4,500/- (Rupees four thousand and five hundred) under the head 'last rites', whereas it should have been Rs. 25,000/-; and that in view of the judgment of Hon'ble the Supreme Court in the matter of **Sarla Verma v. Delhi Transport Corporation, 2009 (3) R.C.R. (Civil) 77,** the multiplier should have been 17 instead of 16. In support of his contentions, learned counsel has further relied upon the judgments of Hon'ble the Supreme Court in the cases of **Rajesh and others v. Rajbir Singh and others, (2013) 9 SCC 54, Kanhsingh and another v. Tukaram and others, 2015 (1) R.C.R. (Civil) 613; Smt. Neeta and others v. Divisional Manager, MSRTC, Kolhapur, 2015 (1) R.C.R. (Civil) 625;** and **Kala Devi and others v. Bhagwan Das Chauhan and others, 2014 (4) R.C.R. (Civil) 936.**

On the other hand, learned counsel for the respondents submitted that while deciding the aforementioned cases, which have been relied upon by learned counsel for the appellants, their Lordships' of Hon'ble the Supreme Court have not considered the 3-Judge Bench judgment of Hon'ble the Supreme Court delivered in the matter of **Reshma Kumari and others v. Madan Mohan and another, 2013 (2) (R.C.R. (Civil) 660,** and as such, the appellants are not entitled to enhancement of the award under the head 'future prospects'. However, no other argument was raised with regard to consortium, love and affection, last rites and the multiplier.

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

This appeal has been filed by the claimant/appellants for modification and enhancement of the amount of compensation awarded by learned Tribunal, whereas no appeal or cross-objections have been filed by the owner, driver and insurance company of the offending vehicle. Therefore, this Court does not deem it necessary to go into the factual aspects of the case. It would be necessary to revise the calculations made by the learned Tribunal and the amount to be awarded under various heads for which the award has not been passed.

So far as the first argument of learned counsel for the appellants that Rajbir (since deceased) was earning Rs. 10,000/- (Rupees ten thousand) per month, has no legs to stand. Though it was averred that Rajbir was earning Rs. 10,000/- per month, but no cogent evidence to that effect was led and, as such, learned Tribunal after scanning the whole material rightly arrived at the conclusion that Rajbir (since deceased) was earning Rs. 5,100/- (Rupees five thousand and one hundred) per month. This Court upholds the said finding.

There appears to be substance in the submission of learned counsel for the appellants that instead of 1/3rd, the deduction for personal expenses should be 1/4th in view of large number of dependants (five). As per the ratio of the judgment of Hon'ble the Supreme Court in the matter of **Sarla Verma (supra)**, deduction @ 1/4th in the monthly personal expenses of the deceased is applicable in the present case. Taking into account the age of the deceased as 30 years, learned counsel for the parties are in unison that multiplier of 17 instead of 16 is applicable.

The 3-Judge Bench judgment of Hon'ble the Supreme Court in the case of **Reshma Kumari and others (supra)**, relied upon by learned counsel for the respondents would not come to their rescue since the judgment in the case of **Rajesh and others (supra),** which is also a 3-Judge Bench judgment, is later in point of time. In the facts and circumstances of the said case, their Lordships' have given the finding with regard to future prospects. Since in the latest judgments in the cases of **Kanhsingh (supra), Smt. Neeta (supra)** and **Kala Devi (supra)**, Hon'ble the Supreme Court had awarded compensation under the head 'future prospects' to the respective claimants, therefore, this Court has no hesitation in holding that the claimant/appellants are entitled to compensation under the head 'future prospects'.

As per the ratio of the judgment of Hon'ble the Supreme Court in the matter of **Rajesh and others (supra)**, 50% of the monthly income of the deceased has to be added as 'future prospects'.

Keeping into consideration the facts and circumstances of the case, this Court is further of the opinion that the amount of Rs. 5,000/- (Rupees five thousand) awarded by the Tribunal under the head 'consortium' is on lower side and, as such, the same is enhanced to Rs. 1,00,000/- (Rupees one lac). Appellant Nos. 2 to 5, i.e. minor children and parents of Rajbir (since deceased) are held entitled to Rs. 50,000/- (Rupees fifty thousand) each under the head 'love and affection'. Thus, the total amount under this head comes to Rs. 2,00,000/- (Rs. 50,000/- x 4 = Rs. 2,00,000/-). Rs. 4,500/- (Rupees four thousand and five hundred) awarded by the Tribunal for 'last rites' also appears to be on lower side and, as such, the claimant/appellants are held entitled to Rs. 25,000/- (Rupees twenty-five thousand) on this account.

Thus, the claimant/appellants are entitled to the compensation as per the calculations made in the following table:

Sr. No.	Heads	% / fraction / multiplier applied	Detail of calculation	Amount (in Rs.)
(A)	(B)	(C)	(D)	(E)
1	Income of the deceased		Per month	5100
2	Less income tax, if payable		Per month	0
3	Net income of the deceased		Per month	5100
4	Future prospects	50%	of 3(E)	2550
5	Monthly income after adding future prospects		3(E) + 4(E)	7650
6	Income from Agriculture		Per month	0
7	Total		5(E) + 6(E)	7650
8	Monthly personal expenses of the deceased	1/4	of 7(E)	1912.5
9	Net dependency (per month)		7(E) -8(E)	5737.5
10	Multiplier to be applied	17		
11	Compensation after applying the multiplier		9(E) X 12 X 10(C)	1170450
12	Loss of consortium, payable to (Appellant No. 1/ Widow, Amrit Kaur @ Guddi)			100000
13	Love, Care and Affection (payable to Appellant Nos. 2 to 5 in equal share)			200000
14	Funeral expenses			25000
15	Any other expenses to be specified			0
	Total Compensation awarded			1495450

As a sequel to the above, this appeal is partly allowed. A sum of Rs. 14,95,450/- (Rupees fourteen lacs, ninety-five thousand, four hundred and fifty only) is awarded as compensation to the claimant/appellants. The claimant/ appellants would be entitled to interest @ 9% p.a. on the awarded amount from the date of filing of the claim petition till realization. The amount awarded by this Court shall be disbursed to the appellants as per the directions passed by the learned Tribunal. The amount already paid by the respondents shall be deducted from the above said amount. Since the insurance of the offending vehicle has not been denied by the learned counsel for respondent No. 2, therefore, the said amount shall be payable by respondent No. 2-insurance company, which can be recovered from the driver-cum-owner of the offending vehicle in accordance with law.

(NARESH KUMAR SANGHI)
JUDGE

March 31, 2015
Pkapoor