**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CM-15464-CII-2007 in/and
FAO-3078-2007
Date of Decision: May 01.2015

Jeewni and others …Appellants

Versus

Darshan Singh and others …Respondents

**CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI**

Present: Mr.Liaqat Ali, Advocate,
for the appellants.

Mr.Karamjit Verma, Advocate
for respondent Nos.1 and 2.

Mr.Suvir Dewan, Advocate
for respondent No.3.

**NARESH KUMAR SANGHI, J**

**CM-15464-CII-2007**

Prayer in this application is for condonation of delay of 40 days in re-filing the appeal.

After hearing learned counsel for the parties, and going through the contents of the application, which is duly supported by an affidavit, the delay of 40 days in re-filing the appeal is condoned.

CM is disposed of.

**FAO-3078-2007**

The present appeal has been filed by the widow, children and mother of Kalu Ram (since deceased) challenging the award dated 14.08.2006 passed by learned Motor Accidents Claims Tribunal, Ludhiana (for brevity, 'the learned Tribunal').

The learned counsel for the appellants has raised the following contentions:-

(i) that the learned Tribunal has wrongly deducted 1/3rd amount from the monthly income of Kalu Ram (since deceased). In fact, it should have been 1/5th since there were eight claimants. In support of his contention, he has placed reliance on **Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 1298**;

(ii) the multiplier of 13 was also against the settled law. The correct multiplier should have been 14;

(iii) the amount awarded under the head of consortium was on lower side;

(iv) the amount awarded for funeral expenses was also on the lower side;

(v) that the learned Tribunal has failed to pay compensation to the minor children of the deceased for love and affection; and

(vi) the interest granted @ 7.5% per annum was against the settled norm of 9% per annum;

Mr.Suvir Dewan, learned counsel for respondent No.3 has very fairly conceded that as per the pronouncement of Hon'ble the Supreme Court in the matter of **Sarla Verma's case (supra)**, the deduction for personal expenses should have been $1/5^{th}$ of the monthly income of the deceased while the multiplier should have been of 14 instead of 13. However, he submitted that the interest @ 7.5% was quite reasonable.

Learned counsel for the driver and the owner of the offending vehicle submits that the learned Tribunal has already awarded the adequate compensation and as such there is no scope for further enhancement.

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

Though there is no necessity to deal with the issues with regard to the negligence on the part of the driver of the offending vehicle and the liability imposed upon the Insurance Company to satisfy the award but to be clear on every aspect the brief facts of the case are as under :-

The claim petition was filed by the widow, seven children and mother of Kalu Ram (since deceased), aged about 42 years, alleging that he (Kalu Ram) was working as Dhaunsi-Dakot (a person going door to door for accepting offerings on every Saturday). He was also working with Sharma Building Material Store at Ludhiana and earning ₹ 5,500/-(Rupees five thousand and five hundred) per month. On 21.05.2004, Kalu Ram (since deceased) was going to *Bhadaur Ke Road* on his bicycle. At about 2.30 p.m., when he was about to cross the road, then a bus bearing registration No.PB-23-A-7289 owned by respondent No.2 and being driven by respondent No.1 at a fast speed, without blowing horn and in a rash or negligent manner came from Jalandhar bypass Chowk; straight away hit the bicycle of Kalu Ram (since deceased) and dragged his bicycle to a considerable distance. Resultantly, Kalu Ram received multiple injuries on his person. He was shifted to Civil Hospital, Ludhiana by one Jagga Ram with the assistance of Girdhari Lal but ultimately he succumbed to the injuries. The matter was reported to the police on the basis of which FIR No.64 dated 21.05.2004 for the offences punishable under Sections 279 and 304-A IPC was registered at Police Station Salem Tabri, District Ludhiana.

On appearance of the respondents, they filed their respective replies and on the basis thereof following issues were framed :-

1. Whether the claimants are the only legal representatives of Kalu Ram deceased? OPP
2. Whether Kalu Ram died in the Motor Vehicle accident caused by the respondent No.1 while driving the bus No.PB-23-A-7289 in a rash and negligent manner? OPP.
3. Whether the claimants are entitled to compensation? If so, what amount and from whom? OPP.
4. Relief.

On the basis of the evidence led by both the parties, the learned Tribunal held that Kalu Ram had died in a road side accident due to rash or negligent driving on the part of respondent No.1 and as such issue No.2 was decided in favour of the appellant/claimants.

Issue Nos.1 and 3 were discussed together and it was held that the appellant/claimants were dependant upon the deceased, who was earning ₹ 2,400/-(Rupees two thousand and four hundred) per month. Since he had a large number of dependants, therefore, 1/3rd of the income was assumed to be spent on himself. The net dependency was assessed @ ₹ 1,600/- (Rupees one thousand and six hundred) per month and by applying the multiplier of 13, a sum of ₹ 2,49,600/- (Rupees two lacs forty nine thousand and six hundred) was assessed as loss of dependency and after adding the funeral expenses and loss of consortium, a total sum of ₹ 2,55,000/- (Rupees two lacs and fifty five thousand) alongwith interest @ 7.5% per annum from the date of filing of the petition till realization was passed in favour of the claimants.

It is the conceded position that the claim petition was filed by the widow, seven children and mother of Kalu Ram (since deceased). It clearly spells out that there were as many as 9 dependants on the earnings of Kalu Ram (since deceased). The 1/3rd deduction from the income of Kalu Ram (since deceased) is against the settled norms. In fact, the deduction should have been 1/5th from the income of the deceased. Reference can be made to **Sarla Verma's case (supra)**. Therefore, this Court finds that ₹ 480/-(Rupees four hundred and eighty) is to be deducted from ₹ 2400/-(Rupees two thousand and four hundred) (the monthly income assessed by the Tribunal) and as such the monthly dependency would come to ₹ 1,920/-(Rupees one thousand, nine hundred and twenty). If it is further multiplied by 12, then the annual dependency would arrive at ₹ 23,040/-(Rupees twenty three thousand and forty). The multiplier of 13 applied by the learned Tribunal is also against the ratio of the judgment delivered by the Hon'ble Supreme Court in the matter of **Sarla Verma's case (supra)**. The correct multiplier in the present case would be of 14. Therefore, if the annual dependency i.e. ₹ 23,040/-(Rupees twenty three thousand and forty) is multiplied by 14, the compensation would arrive at ₹ 3,22,560/-(Rupees three lacs twenty two thousand five hundred and sixty).

Though in the last 5/6 years, the amount awarded under the head of consortium is ₹ 1,00,000/- (Rupees one lac) but keeping in view the fact that accident is of 2004, therefore, the widow of Kalu Ram would be entitled to ₹ 75,000/- (Rupees seventy five thousand) under the head of 'consortium'.

The minor children i.e. appellant Nos. 3 to 8, would be entitled to ₹ 3,00,000/-(Rupees three lacs) (50,000x6) under the head of 'love and affection'. It is made clear that in the recent cases pronounced by Hon'ble the Supreme Court and different High Courts, the amount under this head is awarded @ ₹ 1,00,000/-(Rupees one lac) per child.

The claimants would further be entitled to a sum of

₹ 15,000/-(Rupees fifteen thousand) for funeral expenses.

They would further be entitled to the interest @ 9% per annum from the date of filing of the petition till the full and final payment is made to the claimants.

Resultantly, the appellant/claimants would be entitled to the following amount under various heads:-

| Sr. No. | Heads | Detail of calculation | Amount (in `) |
|---|---|---|---|
| **(A)** | **(B)** | **(C)** | **(D)** |
| 1 | Assessed monthly income of the deceased | | ₹ 2,400/- |
| 2 | Less personal expenses of the deceased | 1/5th of 1 (D) | ₹ 480/- |
| 3 | Dependency of the claimants (monthly) | 1 (D) - 2 (D) | ₹ 1,920/- |
| 4 | Annual dependency | 3 (D) X 12 | ₹ 23,040/- |
| 5 | Compensation after applying multiplier | 4 (D) X 14 | ₹ 3,22,560/- |
| 6 | Loss of consortium | | ₹ 75,000/- |
| 7 | Love and affection (payable to each minor child) | 50,000 X 6 | ₹ 3,00,000/- |
| 8 | Funeral expenses | | ₹15,000/- |
| | Grand Total | | ₹ 7,12,560/- |

A sum of ₹ 7,12,560/-/- (Rupees seven lacs twelve thousand five hundred and sixty) is awarded as compensation to the appellant/claimants. The appellant/claimants would also be entitled to interest on the awarded amount @ 9% per annum from the date of filing of the petition till realization. The amount already paid by the respondent-Insurance Company would be deducted from the enhanced amount.

Appeal partly allowed.

**(NARESH KUMAR SANGHI)**
**JUDGE**

**May 01, 2015**
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