IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2461-2009(O&M)
Date of Decision: July 16, 2015

Ram Chander and another

.....Appellants

Versus

Subhash and others

......Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Gourav Jain, Advocate
for the appellants.

Ms.Shamsher Kaur, Advocate
for respondent No.2-Insurance Company.

....

1. ***Whether Reporters of local papers may be allowed to see the judgment ? yes***
2. ***To be referred to the Reporters or not ? yes***
3. ***Whether the judgment should be reported in the Digest? yes***

<u>Naresh Kumar Sanghi, J.</u>(Oral)

The present first appeal against the order has been filed by Ram Chander-father and Smt.Chanderpati, mother of Sandeep (since deceased) challenging the award, dated 23.10.2008, passed by learned Motor Accidents Claims Tribunal, Jind (for brevity,`the Tribunal'), whereby a sum of ₹1,80,000/- (Rupees one lac and eighty thousand only) along with interest @

7.5% per annum was awarded to the appellant-claimants.

The factum of accident and the death of Sandeep (since deceased) in the said accident, due to rash or negligent driving of the driver of Jeep Trax bearing registration No.HR-99D-5606 (Temp.) by driver-cum-owner of the said vehicle, Subhash, are not in dispute at the appellate stage. The only argument raised by learned counsel for the appellants is that the learned Tribunal has not taken into account all the parameters laid down by Hon'ble the Supreme Court while passing the award in favour of the appellant-claimants. To elaborate his submissions, it was submitted that Sandeep was aged about 21 years and was earning ₹5,000/- (Rupees five thousand only) per month. Learned Tribunal has assessed his monthly income to the tune of ₹2,100/- (Rupees two thousand and one hundred only). The same may be taken as it is while evaluating the just compensation to be awarded to the claimants. He further points out that the learned Tribunal has failed to add 50% of the monthly income in the monthly income of Sandeep (since deceased) as future prospects. He also points out that in view of the law laid down by Hon'ble the Supreme Court in the matter of **Sarla Verma and others** **vs.** **Delhi Transport Corporation and**

others, 2009(3) RCR (Civil) 77, and the latest judgment by Hon'ble the Supreme Court in the matter of **Munna Lal Jain and Anr.** vs. **Vipin Kumar Sharma & Ors. 2015(5) JT 1 (Supreme Court)**, the appropriate multiplier should have been of 18. He also submits that the learned Tribunal has failed to award the appropriate amount for love and affection for the loss of the son of the appellant-claimants. It has also been pointed out that a meagre sum of ₹12,000/- (Rupees twelve thousand only) against the settled norms of ₹25,000/- (Rupees twenty five thousand only) has been awarded for the transportation and the last rites of Sandeep (since deceased). He also points out that the interest awarded @ 7.5% per annum is also on the lower side. In the matters of **Neeta and others v. Divisional Manager, Maharashtra State Road Transport Corporation, 2015 ACJ 598,** and **Jitendra Khim Shankar Trivedi v. Kasam Daud Kumbhar, 2015 ACJ 708,** Hon'ble the Supreme Court had awarded the interest @ 9% per annum.

On the other hand, Ms.Shamsher Kaur, learned counsel for the Insurance Company of the offending vehicle has not disputed the findings of the learned Tribunal regarding the monthly income of Sandeep. However, she submits that in the present case, the age of the parents should be considered instead of age of the deceased while applying the appropriate multiplier system. In support of her contention, she has placed reliance upon **New India Assurance Company Limited** **vs** **Shanti Pathak and others,** 2007 ACJ 2188. She is fair in her submissions that the learned Tribunal has failed to award the appropriate amount for love and affection on account of death of the young son of the claimants. Learned counsel for the respondent-Insurance Company has also fairly admitted that as per the judgment passed by Hon'ble the Supreme Court, the transportation and the funeral expenses should be ₹25,000/- (Rupees twenty five thousand only) instead of ₹12,000/- (Rupees twelve thousand only). Learned counsel for the respondent-Insurance company further submits that the learned Tribunal has already awarded interest @ 7.5% per annum, therefore, there is no scope for further enhancement in that respect.

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

Though the learned counsel for the appellants had initially submitted that Sandeep (since deceased) was earning

₹5,000/- (Rupees five thousand only) per month, but when controverted with the material available on record, he fairly accepted that the monthly income assessed by the learned Tribunal @ Rs.2,100/- (Rupees two thousand and one hundred only) be taken as it is and thereafter the award be calculated.

There appears to be substance in the submission of the learned counsel for the appellants that in view of the judgments of Hon'ble the Supreme Court in the matters of **Sarla** (supra) and **Rajesh and others vs. Rajbir Singh and others, (**2013) 9 SCC 54, the appropriate multiplier should be of 18 and the learned Tribunal has wrongly applied the multiplier of 10.

Learned counsel for the appellants has rightly raised the issue that the learned Tribunal has failed to add 50% monthly income of Sandeep (since deceased) under the head `future prospects' while calculating the award. This Court, on the basis of findings of Hon'ble the Supreme Court in the matter of **Munna Lal Jain** (supra), considers appropriate to add 50% monthly income of Sandeep as future prospects. After addition, monthly income of Sandeep (since deceased) would arrive at ₹3,150/- (Rupees three thousand one hundred and fifty only). Since Sandeep was an unmarried boy, therefore, 50% income has to be deducted for his personal expenses. After said deduction, monthly dependency would come to ₹1,575/- (Rupees one thousand five hundred and seventy five only), and if the same is multiplied by 12, then the annual dependency would arrive at ₹18,900/-(Rupees eighteen thousand and nine hundred only). The same, if further multiplied by 18, then the total dependency would arrive at ₹3,40,200/- (Rupees three lacs forty thousand and two hundred only). The appellant-claimants are entitled to ₹1,00,000/- (₹50,000/- each) for love and affection for the loss of their young son. The appellant-claimants are further entitled to ₹25,000/- (Rupees twenty five thousand only) for transportation and last rites of Sandeep (since deceased). The calculations made above have also been shown in the table made below:

Sr. No.	Heads	%/fraction / multiplier applied	Detail of calculation	Amount (in ₹)
1	Income of the deceased		Per month	2100
2	Future prospects		50%	1050
3.	Monthly income			3150
4.	Personal expenses		50%	1575
5.	Annual income		1575 x 12	18,900
6.	Multiplier to be applied	18		
7.	Compensation after applying the multiplier		18,900 x 18	3,24,200

8	Loss of love and affection		50,000 each	1,00,000
9	Funeral expenses			25,000
10	Total			4,65,200

On the basis of the ratio of judgments in the matters of **<u>Neeta</u>** and **<u>Jitendra Khim Shankar Trivedi</u>** (supra), this Court is of the considered view that interest awarded @ 7.5% per annum is on the lower side and, as such, the appellant-claimants are entitled to interest @ 9% per annum from the date of filing of the claim petition till full and final payment is made. The amount already paid by the respondents shall be deducted from the award determined by this Court.

With the above modification in the Award passed by the learned Tribunal the present appeal is partly allowed.

July 16, 2015 **(NARESH KUMAR SANGHI)**
meenu **JUDGE**