IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.803 of 2007 (O&M)
Date of Decision: May 07, 2015

Smt.Raj Rani & Ors.

...Appellants

Versus

Shanker Prashad & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Anurag Chopra, Advocate,
for the appellants.

Mr.Ravinder Arora and
Mr.Rajesh Kumar Sharma, Advocates,
for respondent No.3.

Mr.Suman Jain, Advocate,
for respondent No.5.

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

Naresh Kumar Sanghi, J.(Oral)

The present appeal has been filed by the claimants for modification and enhancement of award dated 01.09.2006 passed by learned Motor Accidents Claims Tribunal, Ambala, (for brevity "learned Tribunal").

At the very outset, it is apposite to mention that the original paper book and the record were burnt in a fire which had broken out in the record room of the High Court in the year 2007.

Learned counsel for the appellants has pointed out that delay of 44 days in filing the appeal was condoned at the time of preliminary hearing. Learned counsel counsel for the respondents have not contradicted the said averment.

Learned counsel for the appellants submits that Jagdish (since deceased) aged about 50 years was a mason and earning Rs.4,500/-(Rupees Four thousand five hundred) per month. In addition to the widow, four minor children were dependent upon Jagdish at the time of his death in a motor vehicular accident. On the basis of the evidence led, learned Tribunal held that Jagdish (since deceased) was earning Rs.4,500/-(Rupees Four thousand five hundred) per month, deducted 1/3rd of his monthly income for personal expenses of Jagdish, applied the multiplier of 11 and awarded Rs.4,20,000/-(Rupees Four lacs and twenty thousand) along with interest at the rate of 9% per annum from the date of filing of the petition till its realization. He further points out that as per the case of **Sarla Verma and Others** vs. **Delhi Transport Corporation and Anr. 2009(3) RCR (Civil) 77,** the multiplier should have been of 13; for personal expenses the learned Tribunal should has deducted 1/4th from his monthly income; only a sum of Rs.14,000/-(Rupees Fourteen Thousand) has been awarded to the claimants under the head of consortium; in fact Rs.1,00,000/-

(Rupees One lac) should have been awarded to the widow for consortium; each minor children should be granted Rs.1,00,000/- (Rupees one lac) for love and affection; for future prospects the learned Tribunal should have added 30% of the monthly income of the deceased and that the interest awarded at the rate of 9% is on lower side.

Mr.Ravinder Arora and Mr.Rajesh Kumar Sharma, Advocates representing United India Insurance Company Limited (insurer of the offending vehicle i.e car bearing registration No.DL-2CY-7777) submit that in view of **Sarla Verma's** case (supra), the multiplier should have been of 13; learned Tribunal should have deducted 1/4th instead of 1/3rd from the monthly income of the deceased for personal expenses; the accident had taken place in the year 2003, therefore, the widow of Jagdish (since deceased) is entitled to Rs.50,000/-(Rupees Fifty thousand) for consortium and that the minor children of the deceased can also be awarded the adequate amount for love and affection. However, they have opposed the submissions of learned counsel for the appellants with regard to the addition of 30% monthly income of the deceased while calculating the dependency and further submitted that the interest awarded at the rate of 9% is on higher side.

Mr.Suman Jain, learned counsel for respondent No.5- National Insurance Company Limited submits that the offending vehicle i.e car bearing registration No.DL-2CY-7777 was insured with the United India Insurance Company Limited, therefore, no liability can be fastened on the company to which he is representing.

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

Since the factum of accident and liability to pay compensation is not in dispute before this Court, therefore, there is no necessity to discuss the other issues than what has been urged by learned counsel for the appellants and as such, this Court would confine its discussion to evaluate as to what just compensation should be awarded to appellants under various heads.

There is no dispute that Jagdish (since deceased) aged about 50 years, was a mason and earning Rs.4,500/- (Rupees Four thousand five hundred) per month. At the time of his death, he had left behind a widow and four minor children (claimants) who were wholly dependent upon the earnings of Jagdish (since deceased). Perusal of **Sarla Verma's** case (supra) would clearly spell out that if a person was between 46 to 50 years at the time of his death, then a multiplier of 13 should be applied. It is also relevant to mention here that in **Rajesh and others** vs. **Rajbir and Others, (2013) 9 SCC 54,** Hon'ble the Supreme Court had held that the principle of future prospects would be equally applicable to the persons who are not in service. As per **Sarla Verma's** case (supra) if the deceased is of the age of 50 years then 30% of the income should be added as future prospects. If we add 30% in the monthly income then it would be Rs.5,850/-(Rupees Five thousand eight hundred fifty) per month. From the said composite income Rs.1462.50 paisa (Rupees one thousand sixty two and fifty paisa) 1/4th should have been deducted for personal expenses of the deceased. After deduction the figure would arrive at Rs.4,387.50 paisa (Rupees Four thousand three hundred eighty seven and fifty paisa) per month. The said monthly income has to be multiplied by 12 then the annual dependency would arrive at Rs.52,650/-(Rupees Fifty two thousand six hundred and fifty). It has to be further multiplied by 13 then it would come to Rs.6,84,450/-(Rupees Six lacs eighty four thousand four hundred fifty). This Court is further of the considered view that Rs.50,000/-(Rupees Fifty thousand) can be awarded to the widow of Jagdish for consortium and Rs.50,000/-(Rupees Fifty thousand) for each minor child i.e Rs.50,000/- x 4= Rs.2,00,000/-(Rupees Two lacs) for love and affection. Perusal of the award would also reveal that a sum of Rs.10,000/-(Rupees Ten thousand) has been awarded for funeral expenses. This Court deems fit to enhance it to Rs.25,000/-(Rupees Twenty five thousand). The 9% interest awarded by learned Tribunal appears to be most genuine rate of interest. Resultantly, the appellants would be entitled to the following amount as per the table given below:-

Sr.No. (A)	Heads (B)	Details of Calculations (C)	Amount in Rupees (D)
1.	Assessed monthly income of the deceased		4,500.00
2.	Future prospects	30% of 1 (D)	1,350.00
3.	Monthly income after adding future prospects	1(D) + 2(D)	5,850.00
4.	Less personal expenses of the deceased	1/4th of 3(D)	1,462.50
5.	Monthly dependency of the claimants	4(D) – 3 (D)	4,387.50
6.	Annual dependency of the claimants	5 (D) x 12	52,650.00
7.	Compensation after applying multiplier	6(D) x 13	6,84,450.00
8.	Loss of consortium, payable to widow of the deceased		50,000.00
9.	Love and affection payable to each minor children	50,000 x 4	2,00,000.00
10.	Funeral expenses		25,000.00
	Total	Sum of 7(D) to 10(D)	9,59,450.00

The appellant/claimants would further be entitled to interest at the rate of 9% from the date of filing till its realization. The amount already paid by respondent No.3 shall be deducted from the enhanced amount.

The accident had taken place due to rash or negligent driving on the part of driver of car bearing registration No.DL-2CY-7777 and as such, respondent No.3, who is the insurer of the said vehicle shall be liable to satisfy the award.

On the last date of hearing i.e 30.04.2015, Mr.Rajesh Kumar Sharma, Advocate, representing respondent No.3 had failed to appear before this Court, therefore, Sh.Ravinder Arora, who is also the panel counsel for respondent No.3 and was present in the Court, was requested to represent the Insurance Company and as such, he along with Sh.Rajesh Kumar Sharma has argued the case today on behalf of the Insurance company.

With the above modifications, the appeal is partly allowed.

May 07, 2015 **(Naresh Kumar Sanghi)**
seema **Judge**