IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2211-2007(O&M)
Date of Decision: July 10, 2015

Kailash Rani and others

.....Appellants

Versus

Bhim Sen alias Bhim Singh and anr

......Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Sudhanshu Makkar, Advocate
for the appellants.

Service of respondent No.1 already dispensed with.

Ms.Madhu Sharma, Advocate
for respondent No.2.

....

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

Naresh Kumar Sanghi, J.(Oral)

The present first appeal against order has been filed by Smt.Kailash Rani-widow, Mukesh Kumar-son, Ranjan Gandhi-minor son and Smt.Beera Devi-mother of Gulshan Kumar (since deceased) challenging the amount of compensation awarded by learned Motor Accidents Claims Tribunal, Patiala (for brevity, `the

Tribunal') vide award dated 27.11.2006.

The original record of the case was burnt in the fire broken out in the Office of this Court in the year 2007. With the assistance of learned counsel for the parties, the paper-book was reconstructed. There is no dispute by either party with regard to the documents produced on record.

Learned counsel for the appellants submits that Gulshan Kumar (since deceased) aged about 46 years at the time of his death, was doing the work of dyeing and printing the *dupattas* at his house and selling the same as hawker and earning ₹6000/- (Rupees six thousand only) to ₹7000/- (Rupees seven thousand only) per month. The appellants were wholly dependent on the earning of Gulshan Kumar (since deceased). Learned Tribunal has wrongly assessed his monthly income as ₹2,400/- (Rupees two thousand four hundred only). Learned Tribunal has also failed to add 30% monthly income as future prospects while calculating the dependency. Learned Tribunal has also failed to award appropriate amount to the widow under the head `**Consortium**' while the minor son and mother of the deceased were deprived of the appropriate amount under the head '**love**

and affection'. It was also submitted by him that a meagre amount of ₹5,000/- (Rupees five thousand only) has been awarded against the settled norms of ₹25,000/- (Rupees twenty five thousand only) for funeral expenses. He further argued that during the course of evidence, it was disclosed by the claimants that a sum of ₹20,000/-(Rupees twenty thousand only) was spent on the treatment of Gulshan Kumar (since deceased), but the learned Tribunal has not awarded the said amount. It has also been pointed out that 6% interest against the settled principle of 9% has been awarded. He has prayed that the amount awarded under the various heads by the learned Tribunal be enhanced as per his submissions.

On the other hand, Ms.Madhu Sharma, learned counsel representing the Insurance Company, submits that the learned Tribunal has correctly come to the conclusion that Gulshan Kumar (since deceased) was earning ₹2,400/- (Rupees two thousand and four hundred only) per month and, as such, there is no scope for taking a different view than that of what has been calculated by the learned Tribunal in that regard. She also submits that Gulshan Kumar was self employed and, as such, the claimants cannot claim compensation under the head `**future prospects**'. She also submits that adequate interest has been awarded to the claimants, therefore, there is no scope for enhancement in that regard. She further submitted that there was not an iota of evidence to say that the claimants had spent ₹20,000/- (Rupees twenty thousand only) for the treatment of Gulshan Kumar (since deceased) and, as such, the learned Tribunal has rightly opted not to consider the said aspect.

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

Though the factum of accident and death of Gulshan Kumar are not in dispute and, as such, this Court does not deem it appropriate to discuss the said issues in detail. However, to be clear on the facts, it is suffice to mention that on 13.03.2005, Gulshan Kumar (since deceased) came out from his house to go to the shop of his brother, situate at a distance of about 100-150 yards. He had covered a distance of about 100 yards, when a scooter bearing registration No.PB-11 V 9437, being driven rashly or negligently, at a fast speed, without observing the traffic rules, by respondent No.1, emerged from the opposite side and struck against Gulshan Kumar, as a result thereof, Gulshan Kumar fell down on the road and received multiple injuries. He was carried to Government College and Hospital, Sector 32, Chandigarh, for treatment, but keeping in view his serious condition, Gulshan Kumar was referred to Post Graduate Institute of Medical Education and Research, Chandigarh, where he succumbed to the injuries on 14.03.2005, i.e. the very next date of the accident. The matter was reported to the police by Mukesh Kumar s/o Gulshan Kumar (since deceased). The claimants filed the claim petition alleging that Gulshan Kumar was 45 years of age at the time of accident and he was a street hawker selling utensils on his bicycle and also performing the job of dyeing and printing of *dupattas* and was earning ₹6,000/- (Rupees six thousand only) per month. All the claimants were wholly dependent upon the income of Gulshan Kumar (since deceased). It was also alleged that the claimants had spent more than ₹20,000/- (Rupees twenty thousand only) on the treatment and additional ₹20,000/- (Rupees twenty thousand only) on transportation of dead body and funeral etc.

The driver of the Scooter appeared and filed reply before the learned Tribunal alleging that no accident, as alleged, has ever taken place and prayed for dismissal of the claim petition.

Respondent No.2-Insurance Company filed the reply controverting all the averments mentioned in the claim petition.

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

> "1. Whether Gulshan Kumar died in motor accident caused by rash and negligent driving of scooter No.PB 11V 9437 by its driver respondent No.1 Bhim Saini alias Bhim Sain on 13.3.2005 in the area of village Mubarkpur? OPP
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> 2. Whether the claimants are entitled to compensation, if so to what amount and from whom? OPA
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> 3. Whether the claim petition has been filed with mala fide intention in collusion with police authorities and respondent No.1? OPR-2
>
> 4. Relief."

In support of their claim petition, the claimant-appellants examined PW1 Mukesh Kumar, PW2 Kailash Rani and PW3 Krishan Lal. On the other hand, the respondents examined DW1 Chhinder Singh.

After hearing the learned counsel for the parties, the learned Tribunal decided issue No.1 in favour of the claimants holding that Gulshan Kumar had died in the accident caused by Bhim Sain, while driving the scooter rashly or negligently.

While deciding issue No.2 in favour of the claimants, the learned Tribunal held that Gulshan Kumar (since deceased) at the time of his death was aged about 46 years and he was earning ₹2,400/- (Rupees two thousand and four hundred only) per month. It was further held that the claimants were wholly dependent upon the earnings of Gulshan Kumar (since deceased). One-third monthly income was deducted for personal expenses of Gulshan Kumar (since deceased) and hence, the annual dependency was assessed to the tune of ₹19,200/- (Rupees nineteen thousand and two hundred only) and by applying the multiplier of 13, ₹2,49,600/- (Rupees two lacs forty nine thousand and six hundred only) were awarded for the dependency. In addition thereto, a sum of ₹5,000/- (Rupees five thousand only) for funeral expenses and ₹3,000/- (Rupees three thousand only) for consortium were awarded to the widow and hence, a total sum of ₹2,57,600/- (Rupees two lacs fifty seven thousand and six hundred only) along with interest @ 6% per annum from the date of filing of petition till actual realization was awarded.

Issue No.3 was decided against the respondents for want of evidence.

The first argument of learned counsel for the appellants that Gulshan Kumar (since deceased) was a street hawker and was also doing the work of dyeing and printing of *dupattas* at his house and thus earning ₹6,000/- (Rupees six thousand only) per month has not been substantiated from the evidence. Learned Tribunal has given cogent reasons in this regard. Learned Tribunal has also held that Gulshan Kumar can be treated as unskilled labour and thereby assessed his monthly income as ₹2,400/- (Rupees two thousand four hundred only). After re-evaluating the material available on record, this Court is also of the view that Gulshan Kumar (since deceased) was an unskilled labour and was earning ₹2,400/- (Rupees two thousand and four hundred only) per month.

There appears to be substance in the submission of the learned counsel for the appellants that 30% monthly income of the deceased should be added as future prospects while calculating the award. Reference can be made to the latest judgment passed by Full Bench of 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)**, wherein Full Bench of Hon'ble the Supreme Court had also awarded 50% future prospects in view of the facts of the said case. Here the deceased was 46 years old, therefore, future prospects to the extent of 30% of the monthly income can be added while arriving at a true conclusion. Hence, if ₹720/- (30% of ₹2,400/-) is added in the monthly income, then it comes to ₹3,120/- (Rupees three thousand one hundred and twenty only) and, as such, the annual income would be ₹37,440/- (Rupees thirty seven thousand four hundred and forty only). There were four dependents and hence, 1/3rd income was rightly deducted by the learned Tribunal for personal expenses. After deducting 1/3rd for personal expenses, the figure arrives at ₹24,960/- (Rupees twenty four thousand nine hundred and sixty only). Learned Tribunal has also correctly applied the multiplier of 13. Hence, the annual dependency of ₹24,960/- (Rupees twenty four thousand nine hundred and sixty only) if multiplied by 13, then the figure would arrive at ₹3,24,480/- (Rupees three lacs twenty four thousand four hundred and eighty only). The widow is also entitled to an amount of ₹1,00,000/- (Rupees one lac only) for consortium. The minor child and mother of the deceased are also entitled to ₹1,00,000/- (Rupees one lac only) and ₹50,000/- (Rupees fifty thousand only) respectively for love and affection. There appears to the substance in the submission of the learned counsel for the appellants when it was submitted that a meagre sum of ₹5,000/- (Rupees five thousand only) has been awarded for funeral expenses etc.. Therefore, this Court deems it fit to award ₹25,000/- (Rupees twenty five thousand only) for transportation and funeral expenses. The total figures comes to ₹5,99,480/- (Rupees five lacs ninety nine thousand four hundred and eighty). The same is rounded of to ₹6,00,000/- (Rupees six lacs only). The amount so awarded has been shown in the table as below:

Sr. No.	Heads	%/fraction/multiplier applied	Detail of calculation	Amount (in ₹)
1	Income of the deceased		Per month	2400
2	Future prospects		30	720
3.	Monthly income			3120
4.	Annual income		3120 x 12	37440
5.	Personal expenses		$1/3^{rd}$	12480
6.	Net annual dependency		37440-12480	24960
7.	Multiplier to be applied		13	
8.	Compensation after applying the multiplier		24960 x 13	3,24,480
9.	Loss of consortium			100000
10	Loss of love and affection to minor son			100000
11	Loss of love and affection to mother			50000
12	Funeral expenses			25000
13	Total			5,99,480, which is rounded of to ₹6,00,000/-

There also appears to be substance in the submission of learned counsel for the appellants when it was argued that the interest awarded @ 6% per annum was 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. Therefore, the appellants are entitled to interest @ 9% per annum from the date of filing of the claim petition before the learned Tribunal till full and final payment is made. The amount already paid by the Insurance Company of the offending vehicle shall be deducted from the award modified by this Court. The amount of compensation shall be disbursed to the appellant-claimants as per the directions passed by the learned Tribunal.

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

July 10, 2015 **(NARESH KUMAR SANGHI)**
meenu **JUDGE**