IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6676-2010 (O&M)
Date of Decision: July 17, 2015

Smt.Baljinder Kaur and ors
.....Appellants

Versus

Manish Kumar and ors
......Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Amit Shukla, Advocate
for the appellants.

Mr.R.N.Singal, Advocate
for respondent No.3-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)

<u>CM-28916-CII-2010</u>

Application for exemption is allowed subject to all just exceptions.

<u>CM-28917-CII-2010</u>

After hearing the learned counsel for the applicant-appellants and going through the contents of the application, which is duly supported by an affidavit, delay of 28 days in filing the appeal is condoned.

CM disposed of.

FAO-6676-2010

The present appeal has been filed by widow (Baljinder Kaur), minor daughters (Jasmine Kaur and Simran Kaur), mother (Amarjit Kaur) and father (Mahinder Singh) of Swaran Singh (since deceased) challenging the award, dated 23.04.2010 passed by learned Motor Accidents Claims Tribunal, Ludhiana, (for brevity, `the Tribunal'), whereby a sum of ₹3,12,000/- (Rupees three lacs and twelve thousand only) along with interest @ 6% per annum was awarded in favour of the appellant-claimants.

Learned counsel contends that Swaran Singh (since deceased) was an Electrician, working with Shaheed Kartar Singh Sarabha Ayurvedic College, Ludhiana, and getting a salary of ₹3220/- (Rupees three thousand two hundred and twenty only) per month and, as such, the learned Tribunal should have believed the said monthly income of the deceased; 1/3rd deduction for personal expenses of Swaran Singh (since deceased) as held by learned Tribunal was also against the settled norms of 1/4th since he (deceased) left behind five dependents; the learned Tribunal has failed to add 50% of the monthly income of the deceased as future prospects while calculating the award; multiplier of 13 applied by learned Tribunal is also against the settled norms of 16; the two minor daughters and the parents of the deceased have not been awarded the adequate amount under the head 'Love and Affection'; even the widow has not been awarded the adequate amount under the head `Consortium'; the Tribunal has also failed to award the adequate amount for transportation and funeral expenses of Swaran Singh (since deceased) and that 6% interest per annum on the awarded amount was also against the settled norms of 9% per annum.

Learned counsel for the respondent-Insurance Company submits that the learned Tribunal has already awarded the adequate amount of compensation, therefore, there is no scope for further enhancement.

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

The factum of accident and the death of Swaran Singh in the motor vehicular accident are not in dispute, therefore, this Court does not deem it fit to discuss the said issues in detail.

However, to give a clear picture of the case, it is suffice to say that on the intervening night of 13/14.06.2007, Swaran Singh (since deceased) while driving Maruti Zen car, bearing registration No.PB-10-T-8583, was going from Sahnewal to Dehlon. One Harjeet Singh and Kirandeep Singh (since deceased) were also travelling in the said car with Swaran Singh(since deceased). When the said car reached near culvert of Abohar branch canal, within the jurisdiction of village Khanpur on Sahnewal to Dehlon road, a truck bearing registration No.HR-37-A-3941 being driven rashly or negligently, at a fast speed, without observing the traffic rules, by its driver Manish Kumar emerged there from the opposite side and hit the Maruti Zen car being driven by Swaran Singh (since deceased). As a result of collision of the offending truck and the Maruti Zen car, Swaran Singh, Kirandeep Singh and Harjeet Singh received multiple injuries. The injured were carried to Satguru Partap Singh Apollo Hospital, Ludhiana, where Swaran Singh succumbed to his injuries on the intervening night of 13/14.06.2007. The matter was reported to the police, on the basis of which FIR No.110, dated 14.06.2007, for the offences punishable under Sections 279, 304-A, 337, 338 and 427, IPC, was registered at Police Station, Sadar, Ludhiana. The appellant-claimants filed the claim petition claiming ₹20,00,000/- (Rupees twenty lacs only) along with interest @ 18% per annum from the owner, the driver and the Insurance Company of the offending truck.

On notice the respondents did appear before the learned Tribunal and filed their respective replies. On the pleadings of the parties, the following issues were framed:-

> "1. Whether the claimants are legal representatives of deceased Swaran Singh? (OPA)
>
> 2. Whether Swaran Singh died due to rash and negligent driving of truck No.HR-37-A-3941 being driven by respondent No.1? (OPP).
>
> 3. Whether the claim petition is bad for non-joinder of necessary parties ? (OPR-3)
>
> 4. Whether the respondent No.1 was not holding valid and effective driving license and valid documents of truck on the date of alleged accident? If so its effect. (PR-3)
>
> 5. If issue No.1 is proved, whether the claimants are entitled to compensation, if so to what amount and from which of the respondents? (OPP)

6. Relief."

Appellant-claimants examined Baljinder Kaur, appellant No.1 as AW1, Jaswinder Singh as AW2, Rajiv Kumar Shukla as AW3 and closed their evidence after tendering copies of FIR Ex.P1, autopsy report Ex.P2, ration card Ex.P3, proficiency certificate Ex.P4, school certificate of claimant No.2 Ex.P5, School certificate of claimant No.3 Ex.P6, receipts of Apollo hospital Ex.P7 and Ex.P8. Respondent Nos.1 and 2 were ordered to be proceeded against ex parte. Respondent No.3 closed its evidence after tendering copies of insurance policies Ex.R1, Ex.R2, report of N.K.Tandon, Ex.R3 and report of Licensing Authority Ex.P4.

While deciding issue No.1 in favour of the appellant-claimants, it was held that the appellant-claimants were the legal representatives of Swaran Singh (since deceased).

While deciding issue Nos.2 and 3 jointly, the learned Tribunal held that the accident in question had taken place due to rash and negligent driving of vehicle bearing registration No.HR-37-A-3941 by respondent No.1 in which Swaran Singh (since deceased) had lost his life.

Since during arguments issue No.4 was not pressed by respondent No.3-Insurance Company and, as such, the said issue was decided in favour of the driver and the owner of the offending truck.

While deciding issue No.5, the learned Tribunal had held that Swaran Singh (since deceased) was earning ₹3,000/- (Rupees three thousand only) per month and, as such, his annual income was assessed as ₹36,000/- (Rupees thirty six thousand only). Out of ₹36,000/-, 1/3rd income was deducted for his personal expenses and by applying the multiplier of 13, a total sum of ₹3,12,000/- (Rupees three lacs and twelve thousand only) along with interest @ 6% per annum from the date of passing of the award till realization of the entire amount was passed.

There appears to be substance in the submissions of the learned counsel for the appellant-claimants that Swaran Singh (since deceased) was an Electrician, working with Shaheed Kartar Singh Sarabha Ayurvedic College, Ludhiana, and getting a salary of ₹3220/- (Rupees three thousand two hundred and twenty only) per month. The learned Tribunal has not assigned the cogent reasons to hold that the monthly income of Swaran Singh (since deceased) was ₹3,000/- (Rupees three thousand only). On the basis of the material available on record, this Court holds that the monthly income of Swaran Singh was ₹3220/- (Rupees three thousand two hundred and twenty only). Therefore, his annual income would be ₹38640/- (Rupees thirty eight thousand six hundred and forty only). 50% of the annual income can be added in his income as future prospects, i.e. ₹19,320/- (Rupees nineteen thousand three hundred and twenty only). In this way, the annual income of Swaran Singh (since deceased) would come to ₹57,960/- (Rupees fifty seven thousand nine hundred and sixty only). Since there were five dependents, therefore, $1/4^{th}$ amount, i.e, ₹14,490/- (Rupees fourteen thousand four hundred and ninety only) is deducted as personal expenses of Swaran Singh (since deceased). In this way, the total annual dependency of the appellant-claimants would come to ₹43,470/- (Rupees forty three thousand four hundred and seventy only).

In view of the judgments of Hon'ble the Supreme Court in the matters of **Sarla Verma** **vs** **Delhi Transport Corporation**, 2009 (3) R.C.R. (Civil) 77 and **Rajesh and others** **vs** **Rajbir Singh and others**, (2013) 9 SCC 54, the adequate multiplier in the age group of 31-35 years of the deceased would be of 16, and if the annual dependency of ₹43,470/- (Rupees forty three thousand four hundred and seventy only) is multiplied by 16, then the total dependency would come to ₹6,95,520/- (Rupees six lacs ninety five thousand five hundred and twenty only). Since there were two minor daughters left behind by the deceased, therefore, each one of them is entitled to ₹1,00,000/-(Rupees one lac only) for love and affection and hence, ₹2,00,000/- (Rupees two lacs only) is awarded to both the minor daughters under the said head. The deceased had also left behind the parents and each one of them is entitled to ₹50,000/- (Rupees fifty thousand only) for love and affection. Therefore, ₹1,00,000/- (Rupees one lac only) is added under the said head. The widow is also entitled to ₹1,00,000/- (Rupees one lac only) for consortium and that amount is also added while calculating the just compensation. The appellant-claimants are further entitled to ₹25,000/- (Rupees twenty five thousand only) for transportation and funeral expenses of Swaran Singh (since deceased) and by adding the said amount, the total figure arrives at ₹11,20,520/- (Rupees eleven lacs twenty thousand five hundred and twenty only). Hence, the appellant-claimants are awarded compensation of ₹11,20,520/-(Rupees eleven lacs twenty thousand five hundred and twenty only). The calculations made above have also been shown in the table made below:-

Sr.No.	Heads	%/multiplier to be applied	Details of calculations	Amount in (₹)
1.	Income of the deceased		Per month	3220
2.	Annual income		3220 x 12	38640
3.	Future prospects	50%	38640/2	19320
4.	Total annual income		38640+19320	57960
5.	Personal expenses	1/4th	57960/4	14490
6.	Annual dependency		57960-14490	43470
7	Multiplier	16	43470 x 16	6,95,520
8.	Love & affection to two minor daughters	100000 each	100000 x 2	2,00,000
9.	Love & affection to parents	50000 each	50000 x 2	1,00,000
10.	Consortium			1,00,000
11.	Transportation & funeral expenses			25,000
12.	Total compensation			11,20,520

Keeping in view the judgments of Hon'ble the apex Court 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,** the appellant-claimants are further entitled to interest @ 9% per annum from the date of filing of the petition till realization.

Hence, the appellant-claimants are entitled to ₹11,20,520/- (Rupees eleven lacs twenty thousand five hundred and twenty only) along with interest @ 9% per annum from the date of filing of the claim petition till full and final amount is paid by respondent No.3-Insurance Company.

The amount already paid by the respondent-Insurance Company shall be deducted from the modified award passed by this Court.

With the above modification, the appeal is partly allowed.

July 17, 2015 **(NARESH KUMAR SANGHI)**
meenu **JUDGE**