IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.6678 of 2010 (O&M)
Date of Decision: 17th July, 2015

Jaswant Kaur & Anr.

...Appellants

Versus

Manish Kumar & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Amit Shukla, Advocate for
Mr.S.K.Sharma, Advocate,
for the appellants.

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

*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-28923-CII-2010</u>

After hearing learned counsel for the parties and going through the contents of the application which is duly supported by an affidavit, the same is allowed. The applicants are exempted from filing the true typed copy of the Award dated 23.04.2010 passed by learned Motor Accidents Claims Tribunal, Ludhiana.

<u>CM-28924-CII-2010</u>

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

FAO-6678-2010

The present first appeal against the order has been filed by Jaswant Kaur and Gurcharan Singh, the parents of Kirandeep Singh (since deceased), challenging the Award dated 23.04.2010 passed by learned Motor Accidents Claims Tribunal, Ludhiana, (for brevity "learned Tribunal") whereby a compensation of ₹ 2,37,000/- (Rupees two lacs and thirty seven thousand only) along with interest at the rate of 6% per annum from the date of passing of the Award till realization, was passed in favour of the appellant/claimants.

Learned counsel contends that Kirandeep Singh, aged about 26 years, was unmarried and doing the dairy farming business. He was earning ₹ 12,000/- (Rupees twelve thousand only) per month and the appellant/claimants were wholly dependent upon him. Learned Tribunal wrongly assessed his monthly income as ₹ 3,000/- (Rupees three thousand only) and after deducting 1/3rd from the said income for his personal expenses applied the multiplier of 8 and awarded ₹ 2,37,000/- (Rupees two lacs and thirty seven thousand only) along with interest at the rate of 6% per annum from the date of passing of the Award till realization, which is on lower side. He further submits that the amount of ₹ 45,000/- (Rupees forty five thousand only) awarded for treatment of Kirandeep Singh was also on lower side. In fact, the claimants had spent ₹ 70,000/- (Rupees seventy thousand only) on the treatment of Kirandeep Singh.

On the other hand, Mr.Singal, learned counsel for respondent No.3-Insurance Company submits that learned Tribunal has already taken a lenient view and awarded the adequate amount of compensation. Therefore, there is no scope for further enhancement of the awarded amount.

I have heard learned counsel for the parties and with their able assistance gone through the record received from learned Tribunal.

Brief facts of the case are that on 13.06.2007 Kirandeep Singh (since deceased) along with Harjit Singh was travelling as passenger in a Maruti Zen car bearing registration No.PB-10-T-8583 being driven by Swaran Singh (since deceased). Jaswinder Singh was following the Maruti Zen car in another car. When the above-said cars reached near culvert of Abohar Branch canal within the area of village Khanpur, situate on Sahnewal to Dehlon road, a truck bearing registration No.HR-37-A-3941 (for brevity "offending vehicle") being driven by

Manish Kumar in a rash or negligent manner at a high speed and without observing the traffic rules, emerged from the opposite side and hit the Maruti Zen car being occupied by Kirandeep Singh (since deceased). Resultantly, all the occupants including Kirandeep Singh suffered serious injuries. On the same night, Swaran Singh succumbed to the injuries in a hospital. Kirandeep Singh remained admitted in the hospital upto 17.06.2007. After two days of the discharge from the hospital, his condition deteriorated and when he was being carried to the hospital he succumbed to the injuries sustained in the accident on 13.06.2007. The matter was reported to the police vide FIR No.110 dated 14.06.2007 for the offences punishable under Sections 279, 304-A, 337, 338 and 427, IPC at Police Station, Sadar, Ludhiana. The parents of the deceased i.e the appellants, filed the claim petition before learned Tribunal alleging that Kirandeep Singh was doing the dairy business and earning ₹ 12,000/- (Rupees twelve thousand only) per month. Due to the injuries sustained in the accident, he had died on the intervening night of 19/20-06-2007. The claimants were wholly dependent upon Kirandeep Singh (since deceased) They also averred that a sum of ₹ 70,000/- (Rupees seventy thousand only) was spent by them (claimants) on the treatment, medicines, transportation and special diet of

Kirandeep Singh (since deceased).

Notices were issued to the driver, the owner and the insurance company of the offending vehicle and in response thereto, all the three appeared before learned Tribunal and filed their respective replies. All the respondents denied the factum of accident. The respondent-Insurance Company took the additional ground that the offending vehicle was being plied without valid registration, fitness certificate and route permit at the time of alleged accident and as such, the Insurance Company could not be held liable for satisfying the Award.

On the basis of the pleadings of the parties, the following issues were framed:-

1. Whether the claimants are legal representatives of deceased Kirandeep Singh? (OPA)
2. Whether Kirandeep 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 respondent No.1 was not holding valid and effective driving licence and valid documents of truck on the date of alleged accident? If so, its effect. (OPR-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.

While deciding issue No.1, learned Tribunal held that the claimants were the legal representatives of Kirandeep Singh (since deceased).

Issue Nos.2 and 3 were jointly discussed and decided by learned Tribunal. It was held that the accident in question had taken place due to rash or negligent driving of the offending vehicle by Manish Kumar.

During the course of arguments, issue No.4 was not pressed upon by the respondent-Insurance Company and hence, the said issue was decided in favour of the driver and the owner of the offending vehicle.

While deciding issue No.5, learned Tribunal held that the appellant/claimants were able to substantiate the fact that a sum of ₹ 45,992/- (Rupees forty five thousand nine hundred and ninety two only) was spent on the treatment of Kirandeep Singh (since deceased), therefore, they were entitled to ₹ 45,000/- (Rupees forty five thousand only) under the head of 'medical expenses'. It was further held that Kirandeep Singh was aged about 22 years at the time of his death and the claimants were in the age-band of 51 to 55 years, therefore, the multiplier of 8 would be appropriate. It was further held that the monthly income of Kirandeep Singh could be taken as ₹ 3,000/- (Rupees three thousand only) and 1/3rd could be deducted for his personal expenses. Resultantly, the annual dependency of the claimants was assessed to the tune of ₹ 24,000/- (Rupees twenty four thousand only) and by applying the multiplier of 8, the total dependency was assessed to ₹ 1,92,000/- (Rupees one lac and ninety two thousand only). ₹ 45,000/- (Rupees forty five thousand only) were awarded as medical expenses and as such, total amount awarded was ₹ 2,37,000/- (Rupees two lacs and thirty seven thousand only) along with interest at the rate of 6% per annum.

Since the factum of accident and death of Kirandeep Singh on account of the injuries received in the accident are not in dispute, therefore, this Court does not deem it fit to discuss in detail the said issues. It is suffice to say that on 13.06.2007 Kirandeep Singh along with Harjit Singh was travelling in a Maruti Zen car which was being driven by Swaran Singh and the offending truck hit the said Maruti Zen car, as a result of which Swaran Singh, Kirandeep Singh and one Harjit Singh had received injuries. Due to the injuries sustained, Swaran Singh had died on the same day while Kirandeep Singh remained admitted in the hospital up to 17.06.2007 and later on died on the intervening night of 19/20-06-2007.

Though it was alleged by the appellant/claimants that Kirandeep Singh was doing dairy farming and earning ₹ 12,000/- (Rupees twelve thousand only) per month but they could not substantiate the said fact by leading cogent evidence. The oral version of the claimants to that effect cannot be accepted. Learned Tribunal has given the cogent reasons to hold that Kirandeep Singh was earning ₹ 3,000/- (Rupees three thousand only) per month, therefore, this Court also affirms the said finding. During discussion learned Tribunal has mentioned that age of Kirandeep Singh at the time of his death was 22 years. It appears to be a typographical mistake. In fact, at the time of filing of the petition and during the course of evidence it has come on record that Kirandeep Singh was aged about 26 years at the time of his death, therefore, this Court holds that Kirandeep Singh was aged about 26 years at the time of his death. The appellant/claimants i.e the parents of Kirandeep Singh (since deceased) were totally dependent on the earnings of Kirandeep Singh. Learned Tribunal as well as this Court hold that the monthly income of Kirandeep Singh was ₹ 3,000/- (Rupees three thousand only) and in view of his age, 50% monthly income can be added as future prospects while calculating the Award. Therefore, a sum of ₹ 1,500/- (Rupees one thousand and five hundred only) is added in the monthly income of Kirandeep Singh, then it comes to ₹ 4,500/- (Rupees four thousand and five hundred only). Since Kirandeep Singh was bachelor, therefore, 50% monthly income can be deducted for personal expenses. Reference can be made to **Munna Lal Jain and Anr.** vs. **Vipin Kumar Sharma & Ors. 2015(5) JT 1 (Supreme Court).** If the monthly dependency is multiplied by 12, then the annual dependency would come to ₹ 27,000/- (Rupees twenty seven thousand only). The appropriate multiplier in the present case should be of 17. The annual dependency if multiplied by 17 then the figure would arrive at ₹ 4,59,000/- (Rupees four lacs and fifty nine thousand only). Each of the appellants can be awarded ₹ 50,000/- (50,000 x 2 = 1,00,000/-) (Rupees one lac only) under the head of 'love and affection'. Though the appellants had averred that a sum of ₹ 70,000/- (Rupees seventy thousand only) was spent on the treatment of Kirandeep Singh before his death but they could produce the bills of ₹ 45,992/- (Rupees forty five thousand nine hundred and ninety two only), therefore, this Court is of the considered opinion that the appellants can be awarded ₹ 46,000/- (Rupees forty six thousand only) for the expenses on the treatment etc. There appears to be substance in the submission of learned counsel for the appellant that for transportation of the dead body and last rites of Kirandeep Singh, a sum of ₹ 25,000/- (Rupees twenty five thousand only) should be awarded to the claimants. This Court is also of the view that a sum of ₹ 25,000/- (Rupees twenty five thousand only) can be awarded under the said head to the claimants. Therefore, the total figure would arrive at ₹ 6,30,000/- (Rupees six lacs and thirty thousand only).

To sum up, the claimants would now be entitled to the following amount:-

Sr.No. (A)	Heads (B)	Detail of Calculation (C)	Amount (in ₹)
1.	Assessed monthly income of the deceased		3,000.00
2.	Future prospects	50% of 1(D)	1500.00
3.	Monthly income after adding future prospects	1(D) + 2(D)	4,500.00
4.	Annual income	3 (D) x 12	54,000.00
5.	Less personal expenses of the deceased	½ of 4 (D)	27,000.00
6.	Annual dependency of the claimants	4(D) – 5(D)	27,000.00
7.	Compensation after applying multiplier	6 (D) x 17	4,59,000.00
8.	Loss of love and affection	(50,000 x 2)	1,00,000.00
9.	Expenses on treatment etc.		46,000.00
10.	Transportation of the dead body and last rites		25,000.00
	Total	Sum of 7(D) to 9(D)	6,30,000.00

This Court thinks it appropriate to award the interest at the rate of 9% per annum. Hon'ble the Supreme 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,** had awarded interest @ 9% per annum from the date of presentation of claim petition till the time full and final payment is made. This Court is also of the view that the appellant/claimants should be awarded interest at the rate of 9% from the date of filing of the petition till full and final amount is paid.

CONCLUSION

The Award passed by learned Tribunal is modified. It is held that the appellants are entitled to ₹ 6,30,000/- (Rupees six lacs and thirty thousand only) along with interest at the rate of 9% per annum from the date of filing of the petition till full and final payment is made.

It is made clear that the amount already paid by the respondent-Insurance Company shall be deducted from the modified Award passed by this Court.

Accordingly, the appeal is partly allowed.

July 17, 2015 **(Naresh Kumar Sanghi)**
seema **Judge**