

FAO Nos. 5316 and 5317 of 2011 (O/M)

207 (2)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 24.4.2015

FAO No. 5316 of 2011 (O/M)

Gurbaj Singh now deceased through his legal heirs
Mrs. Shivinder Kaur and another Appellants

Versus

Sonu Kumar and others Respondents

FAO No. 5317 of 2011 (O/M)

Smt. Raj Rani and another Appellants

Versus

Sonu Kumar and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashwani Arora, Advocate, for the appellants.

Mr. Rajesh Verma, Advocate, for respondent No. 3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

By this single judgment, I shall dispose of FAO No. 5316
of 2011 titled as Gurbaj Singh now deceased through his legal heirs
Mrs. Shivinder Kaur and another Versus Sonu Kumar and others

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and FAO No. 5317 of 2011 titled as Mrs. Raj Rani and another Versus Sonu Kumar and others, filed by the claimants for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Chandigarh (in short 'the Tribunal'), vide award dated 4.5.2011.

Brief facts of the case are that on the night intervening 17/18.9.2008, at about 1:50 AM, Pardeep Kumar Kamboj alongwith Gurbaj Singh, while travelling on a motorcycle, driven by one Jagtar Singh, was going from Sector-22, Chandigarh, towards Piccadily Chowk. The motorcycle was at slow speed on the left hand side of the road. When the motorcycle reached Aroma Lights and was taking right turn towards Piccadily Chowk and had completed the turn and was on left side, then a Tata Spacio bearing registration No. CH-02-T-1801 came at a fast speed from the Chowk of Sector-17-18-21 and 22 i.e. Bus Stand Chowk and struck against the motorcycle. After hitting the motorcycle, the Tata Spacio struck against the divider and electric pole and stopped. The driver of the offending vehicle left the vehicle at the spot and fled away from the spot. The injured were removed to the hospital where Jagtar Singh (non-claimant) died due to injuries, whereas Pardeep Kumar Kamboj died on 2.11.2008. Gurbaj Singh, who was injured at that time, also filed claim petition seeking compensation to the tune of Rs.

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50,00,000/- on account of injuries received by him.

The driver and the owner denied the accident, whereas the insurance company took the usual pleas.

The Tribunal awarded a sum of Rs. 5,74,500/- in MACT No. 000402 of 5.10.2009 titled as Raj Rani and another Versus Sonu Kumar and others, pertaining to the death of Pardeep Kumar Kamboj. The Tribunal also awarded Rs. 13,16,900/- in favour of Gurbaj Singh in MACT No. 000403 dated 15.10.2008 titled as Gurbaj Singh Versus Sonu Kumar and others alongwith interest @ 7.5% per annum from the date of filing the claim petitions till its realization was also awarded.

Originally, Gurbaj Singh himself filed FAO No. 5316 of 2011 in this Court. However, during the pendency of the appeal, Gurbaj Singh died and his legal heirs i.e. Mrs. Shivinder Kaur and Harchand Singh, mother and father of deceased Gurbaj Singh, were brought on record.

It is further added that, vide order dated 19.3.2014, passed by this Court, the additional evidence was allowed and the report of the Tribunal was sought regarding the additional expenses incurred by Gurbaj Singh after the passing of the award.

The report has been received. However, since Gurbaj Singh has died, different parameters are to be applied to grant the

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compensation.

I have heard the learned counsel for the parties and have also carefully gone through the file.

Case of death of Gurbaj Singh

It is stated that Gurbaj Singh was a graduate. He had done diploma in Hospitality Management from Brighton Institute of Technology, Melbourne, Australia. He was a permanent resident of Australia. Due to the accident, he could not go back and remained on bed. It was stated that 2/3rd brain of Gurbaj Singh was damaged. He remained under acute pain, agony and suffering. The disability of Gurbaj Singh, as per disability certificate (Ex.P348), was 100%. Assessing the loss of future income at Rs. 25,000/- per year, multiplier of 18 was applied and compensation of Rs. 4,50,000/- was allowed. The following compensation under other heads was allowed by the Tribunal :-

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|----|---|---|----------------|
| 1. | Attendant Charges | : | Rs. 30,000/- |
| 2. | Pain and suffering | : | Rs. 30,000/- |
| 3. | Reduction of life expectancy including reduction in amenities | : | Rs. 50,000/- |
| 4. | Diminution of marriage prospects | : | Rs. 30,000/- |
| 5. | Transportation charges | : | Rs. 10,000/- |
| 6. | Medical expenses | : | Rs. 7,16,900/- |

The Tribunal passed a total award for Rs. 13,16,900/-.

Admittedly, in this case, Gurbaj Singh had met with an accident on 18.9.2008 in the early hours of the morning. He remained admitted in one or the other hospitals and remained in coma and ultimately died on 24.12.2011. The additional evidence led by the claimants show that as per the statement of Dr. Anita Goyal (AW2), the patient was again admitted on 1.12.2011 in the Surgical ICU with old case of head injury he was operated at PGI, Chandigarh. He had suffered road side accident in the year 2008. He died on 24.12.2011. The patient also remained on ventilator from 3.12.2011 till his death. The cause of death was head injury which precipitated chest infection, which lead to cardiac arrest and death. Therefore, the death is directly connected with the injury suffered in the accident.

It is to be noted that the deceased Gurbaj Singh never came out of coma. His father Harchand Singh appeared as AW1 in the additional evidence and produced the documents, say Ex.A1 to Ex.A115, which are the medical bills, amounting to Rs. 1,34,272-50. These are to be allowed.

In this case, the deceased was a graduate and had done diploma in Hospitality Management from Brighton Institute of Technology, Melbourne, Australia, in the year 2007, as per certificate (Ex.P4). Therefore, the deceased had bright prospects. However,

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the deceased had not started earning. Therefore, in these circumstances, the notional income of the deceased is to be taken as Rs. 7,000/- per month. 50% is to be added on account of future prospects. The total income of deceased comes to Rs. 10,500/- per month. Since the deceased was unmarried, 50% is deducted on account of personal expenses. Keeping in view the age of 26 years of the deceased, the multiplier of 17 is applied. The amount of compensation comes to Rs. $5,250 \times 12 \times 17 = \text{Rs. } 10,71,000/-$. For loss of love and affection of the deceased to the parents, another sum of Rs. 1,00,000/- is allowed. Rs. 25,000/- on account of funeral expenses are allowed. Since the deceased remained under acute pain and suffering from 18.9.2008 till 24.12.2011, therefore, for pain and suffering for more than 3 years, a sum of Rs. 1,50,000/- @ Rs. 50,000/- per year is allowed. Medical bills of Rs. 7,16,900/- were already allowed by the Tribunal. In addition to this, an amount of Rs. 1,34,272-50, as produced during additional evidence, are also allowed. A sum of Rs. 30,000/- as transportation charges on account of repeated shifting to hospital are allowed, in place of Rs. 10,000/-. Since the deceased was in coma, he required attendant for 3 years and 3 months from the date of accident till his death, therefore, for attendant charges @ Rs. 3,000/- per month for 39 months are allowed, which comes to Rs. 1,17,000/-. Since the

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claimant has died, therefore, the compensation on account of reduction of life expectancy and loss of marriage prospects need not to be considered. The compensation allowed by this Court under the different heads is as under :-

1.	Compensation	:	Rs. 10,71,000-00
2.	Loss of love and affection to the parents	:	Rs. 1,00,000-00
3.	Funeral expenses	:	Rs. 25,000-00
4.	Pain and suffering for three years @ Rs.50,000/- per year	:	Rs. 1,50,000-00
5.	Medical bills	:	Rs. 7,16,900-00
6.	Medical bills after award	:	Rs. 1,34,272-50
7.	Transportation charges for repeated shifting	:	Rs. 30,000-00
8.	Attendant charges	:	Rs. 1,17,000-00
Total			<u>Rs. 23,44,172-50</u>

Say Rs. 23,44,173/-

In this way, the total compensation comes to Rs. 23,44,173/-. The increased compensation shall be paid with interest @ 7.5% per annum from the date of filing claim petition till its realization. The insurance company shall be liable to pay the amount of compensation being the insured of the offending vehicle, which shall be equally shared by the claimants.

Case of death of Pardeep Kumar Kamboj

Pardeep Kumar Kamboj was 19 years of age at the time of his death. The Tribunal presumed the income of the deceased to

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be Rs. 36,000/- per year and after deducting 50% on account of personal expenses, applied the multiplier of 15, as per the age of the parents of the deceased and calculated the compensation at Rs. 2,70,000/-. Rs. 2,500/- as funeral expenses and Rs. 2,000/- on account of loss of estate were allowed. Rs. 3,00,000/- on account of medication and treatment of the deceased, as per Ex.P318 to Ex.P332, were allowed. In this way, a total compensation of Rs. 5,74,500/- was allowed by the Tribunal.

I am of the view that the Tribunal has mis-directed itself and assessed the income on the basis of its own notions and guess work. The minimum wages in the year 2008 were around Rs. 3,500/- per month. Therefore, minimum Rs. 3,500/- were to be taken as income of the deceased. 50% to be added as future prospects. 50% to be deducted as personal expenses and the dependency of the claimants comes to Rs. 2,625/-. Keeping in view the age of 19 years of the deceased, multiplier of 18 is to be applied as per the age of the deceased. The amount of compensation thus comes to Rs. $2,625 \times 12 \times 18 =$ Rs. 5,67,000/-. Rs. 3,00,000/- on account of medical expenses had already been allowed by the Tribunal. As per the authority of the Hon'ble Supreme Court in Sarla Verma Versus Delhi Transport Corporation, 2009 (3) RCR (Civil) 77, Rs. 25,000/- on account of funeral expenses and last rites, another

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sum of Rs. 25,000/- for loss of estate and Rs. 1,00,000/- on account of loss of love and affection of the deceased to the parents are allowed to the claimants. The compensation allowed by this Court under the different heads is as under :-

1.	Compensation	:	Rs. 5,67,000-00
2.	Loss of love and affection to the parents	:	Rs. 1,00,000-00
3.	Medical expenses	:	Rs. 3,00,000-00
4.	Funeral expenses and last rites	:	Rs. 25,000-00
5.	Loss of estate	:	Rs. 25,000-00
	Total		Rs.10,17,000-00

In this way, the total amount of compensation comes to Rs. 10,17,000/-, which is allowed to the claimants alongwith interest @ 7.5% per annum from the date of filing claim petition till its realization. The insurance company of the offending vehicle shall be liable to pay the compensation, which shall be equally shared by the claimants.

Both the appeals are accordingly allowed.

(KULDIP SINGH)
JUDGE

24.4.2015
sjks