IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

F.A.O. No. 6467 of 2011
Date of decision : September 17, 2015

Rani alias Nirmala Rani and others

... Appellants

vs.

C. Bhuphder Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Y.P. Khullar, Advocate
for the appellants.

Ms. Gehna Vaishnavi, Advocate
for respondents.

Surinder Gupta, J

This appeal is against the award dated 3.5.2011 passed by the Motor Accident Claims Tribunal, Ludhiana (for short, the Tribunal) whereby the claimants-appellants were allowed compensation of ₹3,52,000/- for the death of Gurcharan Singh (later referred to as the deceased) husband of appellant no.1 Rani alias Nirmala Rani, father of appellants no. 2 and 3 Kuldip Singh and Jaspal Singh respectively and son of appellant no.4 Ram Piyari in a motor accident with army vehicle No.01N002831H .

The claimants filed petition under Section 166 Motor Vehicle Act, 1988 claiming compensation of ₹10 lacs. The facts about death of the deceased in the motor accident finds mentioned in column no.24 of the claim petition which are reproduced as follows :-

"That on 4.4.2010 at about 2.00 p.m. (noon) the deceased was on his way to village Mangat, Via Rahon Road, Ludhiana and when the deceased reached opposite Dhawan Hospital, Krishna Colony, Rahon Road, Ludhiana, then a vehicle No.01N 00 2831H which was being driven rashly and negligently by respondent no.1 came from side of Basti Jodhewal Chowk, Ludhiana and hit against the person and bicycle of the deceased Gurcharan Singh as a result of which

the deceased received multiple grievous injuries on his body which ultimately proved fatal. The offending vehicle hit against the deceased from behind. The accident was witnessed by Rajan Sandhera and Devinder Kumar who were also going at that time."

The respondents no.1 and 2 in their joint written statement denied the accident and their liability to pay compensation.

The Tribunal while recording findings on issue no.1 concluded that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent no.1. The Tribunal discarded the plea of claimants that the deceased was in the business of hosiery and was earning ₹15,000/- per month. The statement of CW1 Sonu Chopra to this effect was ignored and income of deceased was taken as of worker in the hosiery factory @ ₹4000/- per month. Learned counsel for appellant has argued that the Tribunal has committed grave error of law while assessing income of the deceased as ₹4000/- in the year 2010 when the cost of living was quite high. Even if it has ignored the statement of CW1 Sonu Chopra still by keeping the fact in view that even the daily labourer was earning around ₹200/- per day in the year 2010, the salary of the deceased who was in hosiery business could be taken as ₹10,000/- per month. The age of the deceased was held to be 42 years and multiplier of 11 instead of 14 was applied while calculating the amount of dependency. The Tribunal has not allowed any compensation towards future prospects, loss of love and affection, loss of consortium and funeral expenses as held in the case of ***Rajesh and others vs. Rajbir Singh and others,*** *2013(3) RCR (Civil)170* and ***Munna Lal Jain and others vs. Vipin Kumar Sharma and others,*** *2015(3) RCR (Civil) 447.*

Learned counsel for respondent has argued that testimony of Sonu Chopra about income of deceased was rightly discarded by the Tribunal as no record was produced about the income of deceased as ₹15,000/- per month. However, he has not been able to rebut the submission of learned counsel for appellant regarding compensation towards future prospects, loss of love and affection, loss of consortium and funeral expenses etc. which were not allowed to claimants.

Monthly income of the deceased:

The claimants examined Sonu Chopra who in his affidavit Ex.P1 has stated that the deceased was doing the business of hosiery and was also doing the job work with him and thereby earning ₹15,000/- per month. The Tribunal has committed no error while rejecting the certificate Ex.P1 regarding income of deceased as ₹15,000/- per month. Firstly, there was no record produced on file that deceased was earning ₹15000/- per month as salary; secondly, in the certificate Ex.P1, it is mentioned that deceased was drawing salary of ₹15,000/- while Sonu Chopra who has issued this certificate while appearing as CW1 has no where stated that the deceased was his employee. However, from the statement of Sonu Chopra this fact is proved on record that deceased was in the hosiery business doing some job work. Gurbax Singh CW3 has also stated that deceased was in the business of hosiery and was doing job work. Rani alias Nirmala Rani wife of the deceased has also stated that the income of the deceased was ₹15,000/- per month and he was in hosiery business and doing job work. In the absence of any evidence to the contrary, it is to be believed that the deceased was in hosiery business. The monthly income of the deceased taken by the Tribunal as ₹4,000/- per month is on the lower side and can be reasonably taken as ₹6,000/- per month by drawing presumption that he was earning around ₹250/- per day, in-come slightly higher than daily wage labourer.

Future prospects

The Tribunal has held age of the deceased as 42 years at the time of accident. As observed in case of ***Rajesh and others*** *(supra)* and ***Vipin Kumar Sharma,*** *(supra)*, a sum equal to 30% is to be added in the income of the deceased towards future prospects.

Compensation for loss of love and affection, loss of consortium and funeral expenses:

Claimant no.1 is the wife of the deceased while claimants no.2 and 3 are sons and claimant no.4 is mother of the deceased. As held in the case of ***Sanobanu Nazirbhai Mirza and others vs. Ahmedabad Municipal Transport Service,*** *(2013) 16 SCC 719* the claimant no.1 Rani alias

Nirmala Rani is entitled to compensation of ₹1 lac towards loss of consortium and claimants no.2 and 3 are entitled to compensation of ₹1 lac for loss of care, guidance and love and affection. The claimant no.4, who is the mother and his lost his son is entitled to compensation of ₹50,000/- towards loss of love and affection and estate.

Multiplier

As laid down in the case of ***Smt. Sarla Verma & others vs. Delhi Transport Corporation and another,*** *2009 (3) RCR (Civil) 77 (SC)* the multiplier of 14 is to be applied in this case as the age of the deceased was held to be 42 years by the Tribunal and the Tribunal has wrongly applied the multiplier of 11.

Taking the above parameters into account, the compensation to which the claimants are entitled works out as follows :-

Sr.No.	*Heads*	*Calculation*
(i)	Salary	₹6000 per month
(ii)	30% of (i) above to be added as future prospects	(₹6000+ ₹1800)= (₹7800/ per month)
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	(₹7800-₹2600)= ₹5200 per month
(iv)	Compensation after multiplier of 14 is applied	(₹5200X12X14)= ₹8,73,000
(v)	Loss of consortium	₹100000
(vi)	Loss of care, guidance and love and affection for children-claimants no.2 and 3.	₹100000
(vii)	Loss of love and affection for mother-claimant no.4.	₹50000
(viii)	Funeral expenses	₹25,000
Total		₹11,48,000

The appeal is accepted. The award of the Tribunal is modified and the appellants-claimants are allowed compensation of ₹11,48,000/- for the death of Gurcharan Singh. The above amount will carry interest @ 7.5% per annum from the date of filing of the petition till actual realization. The amount of enhanced compensation shall be shared equally by the claimants. Respondent No.2-insurance company will deposit the share of claimants in their bank accounts or pay the same through demand drafts. The share of minor Kuldip Singh-appellant No.2, who as per his age given at the time of filing of the petition is still minor, will be deposited in some nationalized bank as fixed deposit till the period he attains majority. It is, however, clarified that the bank may take the documents regarding the age of the minor as required at the time of deposit of the amount and the minor shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in his name after the date of attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions the bank usually give to bring the order of the Tribunal to get the payment even after attaining the age of majority. The claimants shall also be entitled to costs of this appeal. Counsel fee is assessed as ₹20,000/-.

September 17, 2015 **(Surinder Gupta)**
deepak **Judge**