

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**FAO No. 441 of 2012(O&M)**

**Date of Decision: September 14 , 2015.**

Kaushliya and others

..... APPELLANT (s)

**Versus**

Mohan Lal and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Ram Bilas Gupta, Advocate  
for the appellants.

Mr. Tilak Ram Redhu, DAG, Haryana  
for respondent No.2.

Ms. Vandana Malhotra, Advocate  
for respondent No.3.

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

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**LISA GILL, J.**

Present appeal has been preferred by the widow and minor children of Ashok Kumar who lost his life in a motor vehicular accident which occurred on 17.07.2010. Appellants pray for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as, the 'Tribunal') vide impugned award dated 07.06.2011 on account of the

death of Ashok Kumar.

Facts as revealed in claim petition are that, Ashok Kumar (since deceased) alongwith his relative Surender was proceeding to Faridabad from Delhi in a bus of Haryana Roadways bearing registration No. HR-38Q-2825 on 17.07.2010 at about 6.30 p.m. When the bus reached at Havells, Faridabad it was stopped by its driver and both Ashok Kumar and Surender started de-boarding. Surender got off the bus but while Ashok Kumar was in the process of alighting from the bus, it started in a sudden, abrupt and negligent manner at a high speed without confirmation by its driver whether all the passengers had stepped down or not. Due to this rash and negligent act on the part of the driver of the bus, Ashok Kumar fell on the ground and hit his head on the road. He died on the spot. Post-mortem was conducted at B.K.Hospital, Faridabad. FIR No. 203 dated 17.07.2010, under Sections 279/304A IPC was registered at Police Station Sector 31, Faridabad on the statement of Surender.

Claim petition was filed by the present appellants under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of ₹30 lacs on account of the death of Ashok Kumar. Claim was contested by the respondents. Mother of the deceased was arrayed as a proforma respondent. She suffered a statement that she did not wish for any compensation on account of the death of her son. Following issues were framed by the Tribunal:-

- “1. Whether the accident in question took place due to rash and negligent driving of bus NO.HR-38Q-2825 by Mohan Lal, respondent No.1? OPP
2. If issue No.1 is proved, to what amount of compensation petitioners are entitled to and from whom? OPP and OPR

3. Whether the petitioners have no locus standi and cause of action to file the claim petition? OPR
4. Relief.”

Learned Tribunal on appreciation of the evidence on record categorically held that Ashok Kumar received injuries in the accident caused due to rash and negligent driving of bus by its driver, respondent No.1 – Mohan Lal. Said finding of the Tribunal has attained finality.

While taking the income of deceased – Ashok Kumar to be ₹4,500/- per month i.e. ₹54,000/- per annum, 1/3<sup>rd</sup> deduction (i.e., ₹18,000/-) was made for personal expenses, dependancy thus working out to be ₹36,000/- per annum. Multiplier of 15 was applied and loss of dependancy was calculated as ₹5,40,000/- (36,000x15). ₹5,000/- on account of loss of consortium, ₹2,000/- on account of funeral expenses and ₹2,500/- on account of loss of estate was awarded by the tribunal, taking the total amount of compensation at ₹5,49,500/-.

Learned counsel for the appellants argues that income of the deceased was proved to be much more on record. He was earning ₹12,000/- per month. Reference is made to statement of PW4 Vikash Kaushik, who has testified that deceased was working as a driver with him getting a salary of ₹12,000/- per month. It is submitted that learned Tribunal has wrongly ignored this evidence on the ground that PW4 Vikash Kaushik could not show that he was in a position to employ a driver at a salary of ₹12,000/- per month. Furthermore, Mark 'C' i.e., an order dated 21.07.2010 by Deputy Commissioner, Faridabad depicting the rate of wages payable to government employees

employed by the various departments in District Faridabad and paid out of the contingency fund reveals that a sum of ₹6,800/- per month was given to them. An extremely meagre amount has been awarded towards of consortium and funeral expenses. Nothing whatsoever has been awarded on account of loss of love and affection to minor children.

Learned counsel for the appellants urges that number of dependants should be treated to be four instead of three and appropriate deduction of 1/4<sup>th</sup> instead of 1/3<sup>rd</sup> should be made towards personal expenses. Mother of the deceased arrayed as respondent No.4 in the claim petition had suffered a statement that she did not wish to take any compensation which may be awarded on account of the death of her son and the same be disbursed to the claimants. It is argued that the abovesaid fact does not exclude the mother as a dependant. Enhanced compensation is thus prayed for.

Learned counsel for respondents, per contra, refute the above averments and submit that adequate compensation has already been awarded by the learned Tribunal which calls for no further enhancement.

I have heard learned counsel for the parties and gone through the record.

In respect to the quantum of income, it is to be noted that PW4 Vikash Kaushik has deposed that he had employed the deceased as a driver. Though insistence of documentary evidence in the shape of an appointment letter, salary slip etc. may not be justified in the case of such private appointment but at the same time, oral evidence of PW4 Vikash Kaushik in the absence of any other evidence on record cannot be relied upon to determine the

salary of the deceased to be ₹12,000/- per month.

Similarly reliance of learned counsel for the appellant on order dated 21.07.2010, Mark 'C' is misplaced inasmuch as the said order apart from being a marked document, was issued subsequent to the date of accident (accident took place on 17.07.2010). Even otherwise, the said order depicts detail of rates of maximum wages which are permissible to government employees employed by various departments at District Faridabad and paid from the contingency fund. It can however not be denied that evidence on record does indicate the deceased, Ashok Kumar to be working as a driver. It is thus considered appropriate to assess his income as ₹5,500/- per month instead of ₹4,500/- per month.

There is no merit in the plea that mother of the deceased should also be treated as dependant. Perusal of affidavit, Ex.PW1/A tendered in evidence by the claimant, Kaushliya widow of Ashok Kumar clearly mentions that the claimants i.e., widow and the minor children are the only dependants of deceased – Ashok Kumar. PW4 Vikash Kaushik has also mentioned in his cross-examination that the deceased used to live alongwith his family consisting of his wife and two children. Thus, in view of the evidence led by the claimants themselves it is not proved that the mother of deceased was dependant upon him. Deduction of 1/3<sup>rd</sup> on account of personal expenses is thus correctly applied by the learned Tribunal in terms of the decision of Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77.**

In view of the dictum of Hon'ble Supreme Court in **Rajesh and**

others v. Rajbir Singh and others, 2013(3) RCR(Civil)170(SC) and Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347, an addition of 50% on account of loss of future prospects has to be afforded as the deceased was 38-1/2 years old at the time of accident. Objection by learned counsel for respondents that the matter in respect to addition in income on account of future prospects stands referred to a larger Bench by the Hon'ble Supreme Court vide order dated 02.07.2014 passed in SLP CC No.8058 of 2014 (National Insurance Company Ltd. v. Pushpa and others), is not tenable. Learned counsel for the respondents are unable to deny that operation of decision of Hon'ble Supreme Court in Rajesh v. Rajbir's case (supra) has not been stayed. In Munna Lal Jain's case (supra) Hon'ble Supreme Court itself has awarded compensation on account of loss of future prospects where the deceased was not in a permanent/government job. Decision in Munna Lal Jain's case (supra) has been rendered subsequent to the reference.

Thus after deduction of 1/3<sup>rd</sup> (₹1,833.33 rounded off to ₹1,833/-) on account of personal expenses, income of the deceased is assessed as ₹3,667/- per month. After affording an addition of 50% (i.e., ₹2,750) on account of loss of future prospects, dependancy comes to ₹4,583/- per month (₹2,750+₹1,833) i.e., ₹54,996/- per annum (₹4,583x12). Applying a multiplier of 15, loss of dependancy is calculated as ₹8,24,940/- (₹4,583x12x15).

Claimants are also entitled to enhanced compensation on account of loss of consortium and funeral expenses. Compensation on account of loss of love and affection is to be awarded towards minor children. Appellants-claimants are, thus, entitled to enhanced compensation as under:-

| <i>Sr.No.</i> | <i>Heads of Claim</i>                                             | <i>Amount</i>       |
|---------------|-------------------------------------------------------------------|---------------------|
| 1.            | Loss of Dependency<br>(₹4,583x12x15)                              | ₹8,24,940/-         |
| 2.            | Loss of consortium to the wife                                    | ₹1,00,000/-         |
| 3.            | Loss of love and affection<br>₹50,000/- each to both the children | ₹1,00,000/-         |
| 4.            | Funeral expenses                                                  | ₹25,000/-           |
|               | <b>Grand Total</b>                                                | <b>₹10,49,940/-</b> |

The compensation already awarded to the claimants by the Tribunal shall stand deducted from the amount as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

With the above modification in the impugned award dated 07.06.2011 passed by Motor Accident Claims Tribunal, Faridabad, this appeal is disposed of.

September 14 , 2015.  
'om'

( LISA GILL )  
JUDGE