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

FAO No. 1907 of 2013 (O&M)
Decided on : 12.03.2015

Kirandeep Kaur and Others

...Appellants

versus

Rajinder Kumar and Others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

1. Whether Reporters of Local Newspapers 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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Present : Mr. Arvind Rajotia, Advocate for
Mr. Ajit Sihag, Advocate
for the appellants.

Mr. Banny Thomas, Advocate
for respondent No. 2-Insurance Company.

K. C. PURI, J. (ORAL)

This is an appeal directed by widow and three minor daughters of deceased-Gurpreet Singh against the award dated 04.02.2013, passed by Shri Rajnish Garg, Motor Accident Claims Tribunal, Patiala.

The claim petition was partly accepted and a sum of ₹ 6,37,000/- was granted by the Tribunal alongwith interest @ 9% per annum from the date of claim petition till realization.

The present petition has been filed for enhancement of compensation and as such, other facts need not to be narrated.

The learned Tribunal has assessed the income of deceased as ₹ 4,000/- per month and has deducted $1/4^{th}$ in respect of personal expenses in view of authority ***Sarla Verma and Others Versus Delhi Transport Corporation and Another" 2009 (3) RCR (Civil) 77.*** *S*ome amount was also allowed to the parents of deceased-Gurpreet Singh. The age of deceased was 29 years and the multiplier of 17 was applied.

Challenge by the claimants is in respect of not granting the future prospects of deceased and claimants have also claimed the amount in respect of loss of consortium to the extent of ₹ 1 lac and ₹ 1 lac in respect of care and guidance of minor children. Claimants have also claimed funeral expenses to the tune of ₹ 25,000/- in view of authority **"*Rajesh and Others Versus Rajbir Singh and Others*, *2013 ACJ 1403 and 2013(3) Recent Apex Judgments (R.A.J.) 659".*** It is further contended that income of the deceased was also taken on lower side. The evidence of claimant claiming the income of the deceased should be ₹ 20,000/- as her evidence goes unrebutted.

Learned counsel for the appellant has further submitted that deceased was taken to hospital and no amount in respect of transportation expenses has been granted.

Learned counsel for Insurance Company has supported the judgment of the Tribunal. It is submitted that increase of 50% cannot be allowed as the deceased was not Government employee and he has no fix income. It is further submitted that the point regarding grant of future income was considered in authority "***Reshma Kumari and Others Versus Madan Mohan and Another*, *2013 (9) SCC 65***" and the Hon'ble Apex Court finding conflicting view in **Rajesh and Others' case (supra) and Reshma Kumari's case (supra)**, has referred the matter to larger bench in

National Insurance Co. Ltd. Versus Pushpa and Other, in Special Leave to Appeal No. 8058 of 2014.

I have considered the submissions made by both parties and gone through the record of the case.

So far as arguments advanced by the learned counsel for appellants to the effect that amount of income has been wrongly assessed is concerned, that arguments is devoid of any legal evidence. The statement of the claimant cannot be taken as gospel truth in the absence of any supporting evidence. So, the income of deceased-Gurpreet Singh of ₹ 4,000/- per month cannot be said to be on lower side.

Now reverting to the point of future prospects. So far as, reliance upon the authorities **Rajesh and Others' case (supra) and Reshma Kumari's case (supra)** is concerned, that controversy has been looked into by this Court in *FAO No. 3903 of 2012 (O&M), titled as Balbir Kaur and Others Versus State of Haryana and Others, decided on 15.01.2014* and this Court is of the view that the authorities **Rajesh and Others' case (supra) and Reshma Kumari's case (supra)** has been pronounced by the same strength of Judges. So, the observation of the Court is to follow-up the authority which is more rational. That point has been decided keeping in view the Full Bench decision of this Court in ***Indo Swiss Time Ltd. Versum Umrao and Others*** **reported in AIR 1981 Punjab and Haryana 213 (1).** This Court in that authority observed that the finding given in **Rajesh and Others' case (supra)** are more elaborate and there is nothing on the file to disapprove the view taken in **Rajesh and Others' case (supra).** So, I am of the considered view that **Rajesh and**

Others' case (supra) has to be followed. In this authority, the Hon'ble Apex Court has held that future prospects should be kept in view even in case of non-salaried person.

So, following that authority, the income of the deceased-Gurpreet Singh can be taken as ₹ 4,000/- plus ₹ 2,000/- i.e. 50% of Rs. 4,000/-, in respect of future prospects of deceased. So, the income of the deceased is taken as ₹ 6,000/- per month including future prospects. The multiplier applied by the learned Tribunal was 17 and deduction has been made to the extent of 1/4th share towards personal expenses. It is strictly in consonance with authority ***Sarla Verma's case (supra)***, by deducting 1/4th share in respect of personal expenses of deceased, the dependency of the claimants comes to ₹ 4,500/- per month. In this manner, the yearly dependency comes to ₹ 54,000/-. The multiplier applicable to the age of deceased which was 29 years, is 17 and as such, the amount of compensation calculated at this rate comes to ₹ 9,18,000/-. Another sum of ₹ 25,000/- stands allowed in respect of funeral and transportation expenses etc. Another sum of ₹ 1 lac stands allowed in respect of loss of consortium in view of authority **Rajesh and Others' case (supra)**.

In this case, there are three minor daughters, so keeping in view the their ages, a sum of ₹ 1 lac in respect of care and guidance of minor children will met the ends of justice. So, the amount of ₹ 1 lac in respect of care and guidance of minor children in view of authority **Rajesh and Others' case (supra)** also granted.

So, in this manner, the claimants are held entitled to claim ₹ 11,43,000/-. The enhanced amount shall carry interest at the rate of 7.5% per annum from the date of application keeping in view the authority **Rajesh and Others' case (supra)**.

Out of the enhanced amount ₹ 2 lacs shall be paid to the widow and the remaining amount shall be shared by three appellants namely Lovepreet Kaur, Manpreet Kaur and Navjot Kaur, daughters of deceased-Gupreet Singh.

The liability to pay the enhanced amount shall be of owner, driver and insurance company jointly and severally, but the primary liability to pay the enhanced amount shall be of insurance company.

Disposed of.

A copy of the judgment be sent to the learned Tribunal for compliance.

March 12, 2015 **(K.C. PURI)**
dk kamra **JUDGE**