

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2308 of 2013 (O&M)
Date of decision : September 18, 2015

Chandri Lal and anotherAppellants

Versus

Narender Sharma and anotherRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rakesh Dhiman, Advocate
for the appellants.

Respondent No. 1 proceeded exparte vide order
dated 17.10.2014

Mr. R.K. Bashamboo, Advocate
for respondent No. 2.

LISA GILL, J

Appellants-claimants Chandri Lal and Smt. Rajeshwari Devi have preferred the present appeal for enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'Tribunal') vide award dated 30.01.2012 on account of death of their son Jai Parkash.

Facts as delineated in the claim petition are that Jai Parkash (deceased) alongwith Rajesh Kumar were proceeding to Gurgaon from the Airport at Delhi on 17.01.2011 on a motorcycle bearing No. DL-3SBW-2857. Jai Parkash was the pillion rider. When

they reached at Gate No. 16 on National Highway No. 8, at about 1.00 a.m. a Scorpio bearing registration No. DL-3FAB-0020 driven in a rash and negligent manner and at a high speed by its driver, respondent No. 1 – Narender Sharma came from behind and struck against the motor cycle. Resultantly Rajesh Kumar as well as Jai Parkash fell on the ground. Jai Parkash sustained fatal injuries and died on the spot. Respondent No. 1 fled from the spot alongwith the offending vehicle. FIR No. 10 dated 17.01.2011 was registered at Police Station DLF Phase 2, Gurgaon on the statement of Rajesh Kumar son of Chhote Lal.

Claim petition under Section 166 of Motor Vehicles Act, 1988 was preferred by the appellants claiming the deceased to be 23 years old, employed with M/s Vipul Facility Management Pvt. Ltd. earning a sum of ₹10,000/- per month. Claimants being the parents claimed to be dependent on his income.

Claim was contested by the respondents and the following issues were framed by the learned Tribunal :-

1. Whether the accident took place due to rash and negligent driving of offending vehicle No. DL-3AFB-0020 by respondent No. 1? OPP.
2. If issue No. 1 is proved, whether the petitioners are entitled to compensation on account of death of Jai Parkash caused in accident and if so to how much and whom from? OPP.
3. Whether the respondent no. 1 was not having a valid and effective driving licence at the time of accident and respondent has violated the terms and conditions of insurance policy? OPR-3
4. Relief.

On appreciation of evidence on record, learned Tribunal held that Jai Parkash sustained fatal injuries in the accident caused on account of rash and negligent driving of the offending vehicle by respondent No. 1. This finding has attained finality.

Learned Tribunal treating the deceased to be labourer assessed his income as ₹3,600/- per month. Presuming that the deceased would get married at the age of 28, it was held that he would only contribute 1/3rd of his income towards parents after five years. For five years it was held that he would be able to contribute 2/3rd of his income. Multiplier of 5 was applied, keeping in view the age of the parents. ₹5,000/- was further awarded on account of funeral expenses. Total sum of ₹1,77,800/- was awarded as compensation to the claimants on account of death of Jai Parkash.

Learned counsel for the appellants argues that the Tribunal has grossly erred in awarding a meagre compensation. It is submitted that at least minimum wage as payable in the State of Haryana at the time of accident should have been afforded. Multiplier of 18 should have been applied. No compensation has been awarded on account of loss of future prospects or loss of love and affection. He, thus, prays for enhancement in the compensation awarded to the appellants.

Per contra Mr. Bashamboo, learned counsel for respondent No. 2 submits that the matter on account of loss of future prospects to self employed/private employed persons stands referred to a larger bench by the Hon'ble Supreme Court vide order

dated 02.07.2014 in **SLP CC No. 1673 of 2015** titled **National Insurance Company versus Pushpa and others**. Therefore, the same should not be granted. In respect to the application of multiplier it is submitted that it has rightly been applied by taking the age of the dependent parents in consideration in view of the Hon'ble Supreme Court in **New India Assurance Company Limited versus Shanti Pathak (Smt.) and others** (2007) 10 SCC 1. It is submitted that no ground for any further enhancement is made out.

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

There is no dispute regarding the age of the deceased i.e. 23 at the time of accident. Learned counsel for the appellants is unable to point out any evidence on record, which would prove that deceased Jai Parkash was earning a sum of ₹10,000/- per month as an employee with M/s Vipul Facility Management Pvt. Ltd., Gurgaon. However, there is merit in his argument that at least minimum wages as applicable in the State of Haryana should have been assessed as income of the deceased.

It is a conceded position that minimum wage of an unskilled labourer at the time of accident i.e. 17.01.2011 in the State of Haryana, was ₹4,500/- per month. Income of the deceased is, thus, assessed as ₹4,500/- instead of ₹3,600/- per month.

Keeping in view the dictum of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77 deduction of 50% has to be applied on account of personal expenses as the deceased was a Bachelor. His income

would, thus, be ₹2,250/- per month.

It has been held by the Hon'ble Supreme Court in **Rajesh and others versus Rajbir Singh and others** 2013 (3) RCR (Civil) 170 that addition on account of future prospects should be afforded to privately employed/self employed persons as well. While the matter regarding addition on account of future prospects to self employed/privately persons has doubtlessly been referred to larger Bench by the Hon'ble Supreme Court, learned counsel for the respondent does not deny that operation of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra) has not been stayed. Hon'ble Supreme Court in a subsequent decision in **Munna Lal Jain and others versus Vipin Kumar Sharma and others** 2015 (6) SCC 347, has awarded an addition on account of loss of future prospects to similarly situated persons. Therefore, it is considered expedient to award an addition on account of loss of future prospects at the rate of 50% (deceased being 23 years old) i.e. a sum of ₹2250/- per month taking his income to be ₹4500/- per month.

Multiplier of 18 has to be applied keeping in view the deceased being 23 years old at the time of accident. It has been held by Hon'ble Supreme Court in **Amrit Bhanu Shali and others v. National Insurance Company Ltd.,** 2012(4) RCR (Civil) 343 and a subsequent decision in **Munna Lal Jain's** case (supra) that selection of multiplier should be based on the age of the deceased and not on the age of the dependant.

Therefore, on a deduction of 50% i.e., ₹2,250/- towards personal expenses and addition of 50% i.e., ₹2,250/- on account of

future prospects having been made, income of the deceased is assessed as ₹4,500/- per month. Annual dependancy of the claimants is assessed as ₹54,000 (₹4500x12). After applying the multiplier of 18, loss of dependancy works out to be ₹9,72,000 (₹54,000 x 18). Claimants are also entitled to ₹50,000/- each on account of loss of love and affection and ₹25,000 for funeral expenses. Thus, the total amount of compensation, to which the appellants is held entitled, is assessed as **₹10,97,000/-**, the details of which are as under:-

Loss of dependancy (₹54,000 x 18)	₹9,72,000/-
Loss of love and affection (₹50,000/- each)	₹1,00,000/-
Funeral expenses	₹ 25,000/-
Total	₹10,97,000/-

Amount of compensation already awarded to the appellants shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced compensation from the date of filing of the petition till realization.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

September 18, 2014
rts

(LISA GILL)
JUDGE