IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5164 OF 2013 (O&M)
DATE OF DECISION : 4th SEPTEMBER, 2015

Smt. Sita Devi

.... Appellant

Versus

Vinod Kumar & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

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Present : Mr. Ashwani Arora, Advocate for the appellant.

Mr. Diwan S. Adhlakha, Advocate for respondent No.1

Mr. Jagjit Singh, Advocate for
Mr. Ashwani Talwar for respondent No.2.

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SURINDER GUPTA, J. (ORAL)

1. This is an appeal seeking enhancement of the compensation allowed by Motor Accident Claims Tribunal, Chandigarh (later referred to as the Tribunal) for death of Rana Shankar @ Ram Shankar (later referred to as deceased) in a motor accident with Car No.HR-54-9494 (later referred to as offending vehicle).

2. The case of the claimant in brief is that on 30.04.2012 at about 9.00am deceased was going on road leading from Tribune Chowk to Transport Light point on his motor cycle at slow speed. When he was little short of Modella light point Phase-I, Industrial Area, the offending vehicle at a fast speed came from behind and hit the motorcycle of the deceased. At the time of accident the offending vehicle was being driven by

respondent No.1 in a rash and negligent manner. Due to impact of the accident deceased fell on the road and received serious multiple injuries. He was rushed to Government Hospital Sector 32, Chandigarh in a Police vehicle where he succumbed to his injuries. The deceased was 39 years of age and was working as welder with PW-3 Naresh Kumar in Plot No.135, Industrial Area Phase-II, Ram Darbar, UT, Chandigarh.

3. In reply respondent No.1-driver and owner of the offending vehicle denied the accident and alleged that a wrong FIR regarding the accident was registered against him. He, however, alleged that the vehicle was insured with respondent No.2-Shriram General Insurance Company Limited. In separate written statement the insurance company also denied the accident and took the plea that there was breach of terms of the policy of the insurance, as such, its liability to pay any compensation is not attracted.

4. Pleadings of parties lead to the framing of issues as follows:

i) Whether accident dated 30.04.2012 causing the death of Rama Shankar @ Ram Shankar had occurred on account of rash and negligent driving of vehicle bearing No. HR-54-9494 being driven by respondent No. 1? OPP

ii) If issue No.1 is decided in favour of the claimant, whether the claimant is entitled for compensation, if so, how much and from whom? OPP

iii) Whether the respondent No. 1 was holding the valid and effective driving licence on the day of accident ? OPR

iv) Relief.

5. The Tribunal, taking the income of the deceased as ₹5,000/- and on applying the deduction towards his personal expenses as ½ of his income allowed the compensation of ₹6,60,000/-.

6. In this appeal the claimant has sought enhancement of the compensation awarded by the Tribunal. Learned counsel for the appellant has argued that income of the deceased was proved by examining his employer-Naresh Kumar as PW-3, who has stated that the deceased was working as welder with him and the maximum wages of the welder was ₹6,095/- in the month of March, 2012 i.e. a month before the accident. He proved on record that in the month of February, 2012 deceased had received salary of ₹4955/- and in the month of April, 2012 he had received salary of ₹5190/-. He also produced on record the copy of the payment register showing the salary paid to the deceased for the month of March, 2012 as ₹5408/-.

7. Learned counsel for the appellant has argued that the Tribunal has committed grave error while taking income of the deceased as ₹5,000/- in stead of ₹5,500/- which he had drawn in the month of March.

8. On giving careful thought to the above arguments of learned counsel for the appellant, I find that the Tribunal has committed no error of law while assessing the salary of the deceased as ₹5,000/-. The Tribunal has looked into the variation in salary of the deceased which was ₹4955/- in the month of February and ₹5190/- in the month of April. No interference in this regard as such is required.

9. The second argument of learned counsel for the appellant is that no amount has been allowed towards the future prospects. The age of the deceased was 39 years. In case ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54,*** a three Judges' Bench of Hon'ble Apex Court has observed in para 11 and 12 as follows:-

> "11. Since, the Court in **Santosh Devi's case** (supra) actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case** (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.
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> 12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an

> addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter. ”

10. The deceased being 39 years of age. While computing compensation addition of 50% in the income of deceased is allowed. The next argument advanced by learned counsel for the appellant is regarding ½ deduction made by the Tribunal towards personal expenses of petitioner. He has argued that though the claimant being the wife is the only dependent of the deceased, still the Tribunal should have allowed deduction of only 1/3 towards the personal expenses of the deceased. He has relied on the observations of coordinate Bench of this court made in the case of ***Tikka Ram versus Sarbati Devi, FAO No.6541 of 2010*** decided on 08.03.2011. In that case widow was not the only claimant. Deceased had left behind two sons and 1/3rd of income of deceased was deducted towards his personal expenses. He has also referred to the judgment of coordinate Bench of this Court in the case of ***Paramjit Kaur versus Gurvinder Singh @ Jinda and others*** passed in ***FAO No.661 of 2011*** decided on 16.01.2012. In this case question of dependency was neither argued nor discussed. In view of this, I find no fault with the observations of the Tribunal applying deduction of ½ of the income of the deceased towards personal expenses.

11. Learned counsel for the appellant has further argued that the Tribunal has allowed a sum of ₹10,000/- towards transportation and funeral rites, while this amount should be ₹25,000/-. This submission of learned

counsel for the appellant is not contested by learned counsel for the respondent, as such, is allowed.

12. In view of the above discussion the compensation to which the claimant is entitled is calculated as follows:

Sr. No.	**Heads**	**Amount (₹)**
1.	Income of the deceased	5000
2.	50% towards future prospects	2500
3.	Deduction towards personal expenses (1/2 of the income)	7500X1/2 =-3750
4.	Multiplier applied (15)	3750x12x15=6,75,000
5.	Funeral expenses	25000
6.	Loss of consortium to the widow	1,00,000
7.	**Grand Total** (675000+**25000+100000)**	**8,00,000**

13. This appeal has merit and is allowed. The amount of compensation awarded to the claimant is enhanced from ₹6,60,000/- to ₹8,00,000/- (eight lacs only). Claimant will also be entitled to future interest as allowed by the Tribunal. Respondent No.2, being insurer of the vehicle, shall be liable to pay the amount of compensation.

14. In order to secure the future of the claimant, it is ordered that the amount of enhanced compensation will be invested in her name in the shape of fixed deposit for a period of three years and she shall be entitled to get monthly, quarterly and yearly interest on this amount as per her wish. However, after the expiry of period of three years she shall be entitled to withdraw this amount.

4th September, 2015 (SURINDER GUPTA)
'raj' JUDGE