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

FAO-5544-2014
Date of decision: 4th September, 2015

SONA DEVI AND ORS ....**Appellants**

Versus

KRISHAN AND ORS ....**Respondents**

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.S. Longia, Advocate
for the appellants.

Mr. D.R. Bansal, Advocate
for respondent No.3.

LISA GILL, J.

Present appeal has been filed by the applicants-claimants for enhancement of compensation awarded on account of death of Balkar Singh by the learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as, the 'Tribunal'). Claimants are the widow and three minor children of the deceased-Balkar Singh.

Facts as revealed in the claim petition are that Balkar Singh lost his life in a motor vehicle accident which took place on 11.12.2012 when he was proceeding from Village Jalbera to Pehowa on tractor trolley No.HR-41-4612. Said tractor was being driven by Balkar Singh at a moderate speed on the correct side of the road. Accident occurred due to rash and negligent driving of the offending vehicle i.e. Tata 207 bearing No.HR-64-7179 by respondent No.1-Krishan @ Kala. FIR No.436 dated 14.12.2012 was registered against respondent No.1-Krishan @ Kala at Police Station Pehowa. Postmortem on the dead body was conducted at Government Multi Specialty Hospital, Sector 16, Chandigarh. Claimants i.e. the widow and minor children preferred petition under Section 166 of the Motor Vehicle Act 1988 claiming a sum of ₹20,00,000/- as compensation on account of death of Balkar Singh. He was stated to be 36 years old at the time of death, an agriculturist running a diary farm and earning ₹20,000/- per month.

Claim was resisted by the respondent driver and the owner of the offending vehicle pleading registration of a false case and in the alternate that driver of the offending vehicle was holding a valid driving licence at the relevant time and the vehicle in question was insured with the respondent-Insurance Company. Therefore, liability, if any, was of the Insurance Company. Respondent No.3 also denied the accident and claimed the petition to be filed by the claimants in collusion with the owner and the driver of the offending vehicle which was being driven in contravention of the terms and conditions of the Insurance policy.

Learned Tribunal framed the following issues:

1. *Whether the accident resulting into death of Balkar Singh took place due to rash and negligent driving of respondent No.1, while driving Tata 207 No.HR-64-7179? OPP*
2. *If issue No.1 is proved to what amount of compensation and from whom the claimants are entitled to? OPP*
3. *Whether there was violation of the terms and conditions of the insurance policy and respondent No.3 is not liable to pay any compensation? OPR3*
4. *Relief.*

Learned Tribunal on consideration of the facts and circumstances of the case concluded that Balkar Singh lost his life in the motor vehicular accident which occurred on 11.12.2012. Said accident was caused due to rash and negligent driving of the offending vehicle by respondent No.1. Specific finding of the Tribunal on this account is not under challenge by either Insurance Company or any other party.

Learned Tribunal while assessing income of the deceased Balkar Singh as ₹6,000/- per month deducted 1/4th on account of personal expenses as per dictum of the Hon'ble Supreme Court in *Sarla Verma v. DTC, 2009(3) RCR(Civil) 77*.

Taking the age of the deceased Balkar Singh to be 41, multiplier of 14 was applied and loss of dependency was assessed as ₹7,56,000/-. ₹10,000/- was awarded on account of funeral expenses, ₹34,500/- on account of medical expenses and ₹1,750/- as ambulance charges i.e. the total compensation of ₹8,02,250/- along with interest at the rate of 7.5% was awarded.

Learned counsel for the appellant confines his claim to enhancement on account of loss of consortium, loss of love and affection towards the minor children as well as funeral expenses. Keeping in view the judgments of the Hon'ble Supreme Court in *Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170 (SC), Munna Lal Jain vs. Vipin Kumar Sharma, (2015) 6 SCC 347,* he also claims loss of future prospects of the deceased.

Learned counsel for the respondents while refuting the said arguments submits that no compensation is required to be awarded on account of loss of future prospects for the reason that the deceased was an agriculturist. Agriculture land would continue to be with the claimants, from which they shall derive income. It is further submitted that in view of the reference of the question of award of compensation on account of loss of future prospects to a self-employed or privately employed person by the Hon'ble Supreme Court vide order dated 02.07.2014 in *SLP CC No.8058 of 2014 (National Insurance Company Ltd. vs. Pushpa and others)*, there should be no enhancement on this count even if it is assumed that it is the loss of managerial assets which have been assessed.

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

It is undisputed that in view of the judgments of the Hon'ble Supreme Court in *Rajesh and others case (supra), Munna Lal Jain's case (supra)* as well as *Vimal Kanwar and others vs. Kishore Dass and others, (2013) 7 SCC 476,* wife of the deceased is entitled to a sum of ₹1,00,000/- on account of loss of consortium and three minor children to a sum of ₹50,000/- each on account of love and affection. Compensation on account of funeral expenses is enhanced to ₹25,000/- instead of ₹10,000/-

It is to be noted that in view of the deceased being an agriculturist, income of the deceased has been assessed as that of a manager as ₹6,000/- per month. It is the loss of managerial capacity/asset which has been assessed. Income has not been assessed on the basis of the income derived from six acres of land which was proved to be owned by the deceased as per Jamabandis Ex.P-8 to P-10. In this situation, compensation on account of loss of future prospects is justified and should be granted keeping in view the fact that it is the managerial capacity which has been taken into account for assessing the income. It is not disputed by learned counsel for the respondents that operation of the decision of the Hon'ble Supreme Court in *Rajesh and others case (supra)* has not been stayed. In *Munna Lal Jain's case (supra),* Hon'ble Supreme Court has subsequently awarded compensation on account of loss of future prospects in the case of self-employed/privately employed persons. Therefore, an increase of 30% is required to be added in the income of the deceased who was 41 years old at the time of accident.

Accordingly, adding 30% of the income i.e. ₹1800 (30% of ₹6,000/-) income of the deceased is assessed at ₹7,800/- per month. Applying deduction by 1/4th (₹1,950/-), income of the deceased is assessed as ₹5,850/- per month and ₹70,200/- per annum. Applying multiplier of 14 loss of dependency is assessed as ₹9,82,800/-. Appellants are thus entitled to compensation as detailed hereunder:-

Loss of dependency (₹5850x14x12)	₹9,82,800/-
Loss of consortium	₹1,00,000/-
Loss of love and affection @ 50,000 to three minor children	₹1,50,000/-
Funeral expenses	₹25,000/-
Medical expenses including ambulance	₹36,250/-
Total	**₹12,94,050/-**

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-said modification in the impugned award dated 05.09.2013 passed by the Motor Accident Claims Tribunal, Kurukshetra, present appeal stands disposed of.

September 04, 2015 **(LISA GILL)**
m. sharma **JUDGE**