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

FAO No.5476 of 2002
Date of decision : July 05, 2016.

Kanta and another

.... Appellants

vs.

Gaffar and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not? yes
2. Whether the judgment should be reported in the Digest?

Present : Mr. Anil Shukla, Advocate,
for the appellants.

None for respondent No.2.

Mr.R.M.Suri, Advocate,
for respondent No.3.

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AMOL RATTAN SINGH, J.

This is an appeal filed by two of the claimants before the learned Motor Accident Claims Tribunal, Faridabad, seeking enhancement of the compensation of Rs.2,00,000/- awarded to them on account of the unfortunate death of their son on 18.03.2001, in a motor vehicle accident.

2. The facts, as taken from the impugned Award dated 17.07.2002, are that one Vijender Singh, alongwith Satparkash, Shankar and deceased Sonu, were coming from Gurgaon, in a Contessa car bearing registration No.DL-4CC-9570, stated to be driven by Vijender Singh at a moderate speed. When the car reached ahead of Police Post Pali, a dumper vehicle bearing registration No.HR-38-0786, driven by respondent No.1, allegedly in

a rash and negligent manner, came from the opposite side and hit the car, resulting in injuries to the occupants of the car, as a result of which Sonu @ Pradeep, son of the appellants, died in the hospital, subsequently.

Consequently, the claim petition was filed by the present appellants and their two other sons, seeking a compensation of Rs.15,00,000/-.

3. In response to the notice issued by the Tribunal, respondents No.1 and 2 did not appear to contest the petition and were proceeded against *ex parte,* whereas respondent No.3, i.e. the insurance company, with which the vehicle was insured , filed its written statement denying all the allegations and further taking various preliminary objections, including that respondent No.3 was not holding a valid driving licence.

4. Upon the aforesaid pleadings, the Tribunal framed issues with regard to whether the accident occurred due to the rash and negligent driving of respondent No.1 and if that issue was proved, as to what amount of compensation was due, and from whom, and also whether respondent No.1 was holding the valid driving licence or not.

5. Witnesses were examined by the claimants, including the present appellants themselves and one Assistant Ahlmad from a Court trying the criminal case against respondent No.1, who testified to that effect.

With no rebuttal evidence by the respondents, the issue of negligence was decided in favour of the claimants and against respondent No.1.

6. The first appellant testified that her son was 21 years of age and was earning Rs.8000/- per month as salary and her two other sons were running a shop of Kiryana and except this, there was no other source of

income to the family.

Appellant No.2 testified that his son had been working with the proprietor of M/s Avinash Motors at Delhi and proved a certificate to that effect, Ex.P7, but upon cross-examiantion of the proprietor of the firm, i.e. Swaran Singh who appeared as PW5, the learned Tribunal found that even though the witness stated that he had employed the deceased @ Rs.7000/- per month and had also employed four other employees, he could not show even an income tax return.

Hence, an income of Rs.7000/- per month was not accepted by the Tribunal and it was assessed instead at Rs.2400/- per month, as the income of a semi-skilled worker.

To the aforesaid income, a 1/3rd cut was applied towards the personal living expenses of the deceased, thereby making the dependent income of the appellants come to Rs.19,200/- per annum (Rs.1600/- per month).

To the aforesaid income, a multiplier of 10 was applied by the Tribunal, taking into account the age of the parents, i.e. the present appellants, which was stated to be 50 and 63 years respectively.

Consequently, the loss of dependent income to the appellants came to Rs.1,92,000/-, to which Rs.8000/- was added by way of funeral expenses by the Tribunal, thereby coming to a total compensation of Rs.2,00,000/-, which was awarded alongwith interest @ 9% per annum, running from the date of the filing of the claim petition, till the date of its realization.

The other two claimants, i.e. the brothers of the deceased, were held to be not entitled to any compensation.

7. Before this Court, Mr. Anil Shukla, learned counsel for the appellants, submitted that firstly the Tribunal had wholly erred in assessing the income of the deceased to be only Rs.2400/-, whereas his employer actually testified and proved the salary certificate.

Secondly, learned counsel contended that the multiplier of 10 applied by the Tribunal to the assessed income was also wholly against the judgments of the hon'ble Supreme Court, to the effect that the multiplier is to be applied not as per the age of the parents but of the deceased. Hence, the deceased being only 21 years of age, a multiplier of 18 should have been applied.

He further submitted that no compensation for the loss of love and affection of their son has been awarded to the appellants, or to the other claimants before the Tribunal, i.e. the brothers of the deceased. Still further, the amount of Rs.8000/- awarded towards funeral expenses of the deceased is also not as per the law settled by the hon'ble Supreme Court in **Rajesh and others vs. Rajbir Singh and others** (2013)(9) SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013)(7) SCC 476, wherein it was held that Rs.25,000/- is to be awarded for the said purpose.

Lastly, learned counsel submitted that loss of future prospects of income have also not been factored in and awarded by the Tribunal.

8. Mr.R.M.Suri, learned counsel for respondent-insurance company, on the other hand submitted that as regards the income of the deceased, since the person testifying as the employer of the deceased, could not even show his own accounts books or even income tax returns, the Tribunal correctly ignored his testimony and assessed Rs.2400/- per month to be the income of the deceased, as an unskilled worker, even though there was

no proof with regard thereto.

Next, Mr.Suri submitted that the multiplier had also been correctly applied and as regards the loss of future prospects of income, the deceased not having been proved to be working in a permanent salaried employment, no loss of future prospects of income could be awarded to the appellants.

9. Before considering the arguments aforesaid, it is to be noticed that though earlier a counsel had appeared on one occasion for respondent No.2, after the case file was reconstructed upon records having been burnt in a fire incident that took place in January 2011, none appeared for respondent No.2. However, since the Tribunal also held that the driving licence of respondent No.1 is valid and therefore, held all the three respondents, including the insurance company, to be jointly and severally liable to pay the compensation and eventually it is the insurance company that is to indemnify the insured with regard to the compensation payable, the absence of any counsel for respondents No.1 and 2 is actually inconsequential.

10. Having considered arguments of both learned counsel and the Award of the learned Tribunal, in my opinion counsel for the appellants is correct to the extent that the multiplier of 10 applied by the Tribunal to the assessed income of the deceased, should have actually been as per the age of the deceased and not the age of the parents, i.e. the present appellants, as has been held by the hon'ble Supreme Court in **Amrit Bhanu Shali v. National Insurance Company Limited,** 2012 (4) RCR (Civil) 343.

However, what needs to be rectified, even though this is not an appeal by the respondents (who have filed no appeal against the finding of the Tribunal), is the deduction made towards the personal expenses of the deceased. Even in the judgment in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121, it was held that from the assessed income of a deceased bachelor, 50% is to be deducted towards his personal living expenses and not 1/3rd, as has been dedcuted by the Tribunal in the present case.

11. As regards the assessment of income of the deceased, I find no fault in the finding of the Tribunal, inasmuch as, though a salary certificate by a person stated to be an employer of the deceased was produced and the said person who issued the certificate was also examined, the Tribunal rightly disbelieved the employment, in view of the fact that other than the certificate and the testimony of a person stated to be running a motor mechanic/motor parts shop, no accounts books or income tax returns were produced, to show that the employer had actually employed the deceased at a salary of Rs.7000/- per month, as contended by the appellants herein.

Therefore, with the minimum wages of a skilled worker in Haryana, being in fact less than 2400/- as on 18.03.2001, i.e. the date of the accident, I see no error in the Tribunal having assessed the income to the maximum possible, i.e. Rs.2400/-, even though from the Award itself it is not shown as to how educated the deceased was.

12. Hence, accepting the assessed income of the deceased to be Rs.2400/- per month, a cut of 50% is to be applied on the same, thereby bringing the loss of dependent monthly income of the mother of the deceased, i.e. appellant No.1, to be Rs.1200/-, or Rs.14,400/- per annum.

To the aforesaid annual income, a multiplier of 18 is to be applied, the deceased being 21 years of age, thereby bringing the total loss of income to appellant No.1, to be Rs.2,59,200/- which is accordingly awarded to her.

It needs to be noticed here that it has been held by the hon'ble Supreme Court, even in *Sarla Vermas'* case (supra) (reference para 31, SCC citation), that only a mother can be considered to be dependent upon a deceased, if he/she was unmarried, and in subsequent judgments it has been held that unless the father is specifically shown to be dependent upon the deceased son/daughter, it would be taken that he was not dependent upon him/her.

13. Coming to the other heads of compensation, learned counsel for the appellants is correct, in the opinion of this Court, that in terms of the judgments in *Rajesh v. Rajbir Singh and Vimal Kanwars'* cases (supra), the expenses towards the last rites of the deceased, have been accepted by the Apex Court to be Rs.25,000/- and same is accordingly awarded, instead of Rs.8000/- awarded by the Tribunal under that head. It may be noticed here that in *Rajesh v. Rajbir Singhs'* case, the accident took place in 2007, but in *Vimal Kanwars'* case, it took place in the year 1996. Hence, in the present case, the accident having taken place in the year 2001, the sum of Rs.25,000/- is accordingly awarded to the appellants under that head.

14. As regards the loss of love and affection of their son, undoubtedly both the appellants would be entitled to compensation for such loss of love and affection, even though, obviously, any amount of compensation awarded under that head would be inadequate. Conventionally, this Court has been awarding Rs.50,000/- to the parents of deceased adult 'children' and accordingly, the appellants are both awarded the said sum each.

Though I agree with the learned counsel for the appellants that at least for the loss of love and affection of their brother, the two other claimants before the Tribunal would also be entitled to some amount of compensation, (though would not otherwise be entitled to compensation under any other head), however, the said claimants, i.e. the brothers of the deceased, not being in appeal, nothing more need be said with regard thereto.

15. Coming to the contention of learned counsel for the appellant, with regard to loss of future prospects of income, that issue is under consideration of the hon'ble Supreme Court, with regard to such compensation payable to claimants where the deceased was not in permanent salaried employment. A reference on that issue was made to a larger Bench in **National Insurance Company Limited v. Pushpa,** (2015) 9 SCC 166 and as such, though in the humble opinion of this Court, such loss of future prospects of income may be payable even in such like cases, in view of the fact that even daily wages of a labourer increase as per inflationary trends, however, what has been done by this Court so far, after the reference was made to a larger Bench of the hon'ble Supreme Court, is that the loss of future prospects of income, as may become payable to the eligible claimants, have been calculated on the parameters laid down in *Sarla Vermas'* case, though disburement thereof to the claimants has been made dependent on the outcome of the judgment of the larger Bench in *Pushpas'* case (supra).

Hence, the same is being done in the present case also, i.e. the assessed income of the deceased being Rs.2400/- per month and he being less than 40 years of age, 50% of that amount is to be taken to be the basis for calculation of the loss of future prospects of income to appellant No.1 in this case. Accordingly, taking the aforesaid amount of Rs.1200/- (50% of Rs.2400/-) another deduction of 50% is made towards the personal living expenses of the deceased had he remained alive, thereby making a future dependency of Rs.600/- per month to appellant No.1, or an annual dependency of Rs.7200/-. To that amount, again a multiplier of 18 is to be applied, bringing the total loss of future prospects of income to appellant No.1, to be Rs.1,29,600/-.

Accordingly, this amount will be deposited by the respondent-insurance company with the Tribunal, alongwith 6% interest thereupon, running from the date of filing of the claim petition till the date of such deposit.

If the ratio of the judgment of the hon'ble Supreme Court (larger Bench), in *Pushpas'* case, is to the effect that loss of future prospects of increased income are payable to claimants in cases where the accident victim was not in a permanent salaried job, then the appellants in this case would be entitled to get the amount deposited by the insurance company disbursed to them, alongwith interest that has accured upon such amount in the fixed deposit, in the same manner as an Award of the Tribunal is executed, without further reference to this Court. If, on the other hand, the ratio of the aforesaid judgment is to the effect that such like claimants are not entitled to the loss of future prospects of increased income, then the insurance company would be entitled to have the sum deposited by it with the Tribunal, alongwith interest that has accrued thereupon in the fixed deposit, refunded to itself, upon making an application in that regard, to the Tribunal.

16. Thus, with the loss of future prospects of income only being ordered to be deposited by respondent No.3 with the Tribunal till the decision of *Pushpas'* case (supra) (larger Bench), presently what is awarded and immediately payable to the appellants is as follows:-

i)	Towards loss of income (other than loss of future prospects of income)	Rs.2,59,200/-

ii)	Towards loss of love and affection to both appellants	Rs.50,000/- =Rs.1,00,000/-
iii)	Funeral expenses and last rites (appellant No.2)	Rs.25,000/-
	Total	**Rs.3,84,200/-**

Therefore, by the present judgment, a sum of Rs.1,84,200/- is presently awarded over and above the compensation of Rs.2,00,000/- awarded by the Tribunal.

The aforesaid enhanced amount of Rs.1,84,200/- would carry interest @ 7.5% per annum, running from the date of the filing of the claim petition, till the realization thereof.

18. The appeal is accordingly partly allowed to the above extent, with no order as to costs.

July 05, 2016 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**