IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

FAO No.184 of 2002
Date of Decision :25.02.2016

Kavita and others ....Appellants

Versus

Gurudutt and Others ....Respondents

Coram Hon'ble Mr. Justice Amol Rattan Singh.

Present: Mr.Naresh Kumar, Advocate, for the appellants.

None for respondents.

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AMOL RATTAN SINGH, J.

The four claimants before the learned Motor Accident Claims Tribunal, Faridabad, are in appeal against the Award of the learned Tribunal, by which compensation of Rs.3,64,800/- was awarded for the death of Mahender Singh, husband of appellant No.1, father of appellants No.2 and 3 and son of appellant No.4.

2. As per the Award, in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, it was stated that on the night of 14/15.11.1998, Mahender Singh was standing on the G.T.Road, Gorota Chowk, Hodal, waiting for a vehicle to return home to Palwal. A Tata light vehicle bearing registration No.DL-1L-7658, allegedly driven rashly and negligently by respondent No.1, came and hit Mahender Singh, due to which he received grievous injuries and died on the spot.

A post mortem-examination was conducted on 15.11.1998 at the Civil Hospital, Palwal and an FIR registered on 23.11.1998, against respondent No.1.

It was claimed that Mahender Singh was an Advocate, 34 years of age, earning approximately Rs.11,000/- per month.

Respondent No.1, i.e. the driver of the vehicle, in his written statement, denied the accident completely. Respondent No.2, i.e. the owner of the vehicle, did not file any written statement and was, in fact, proceeded against *ex parte.*

The Insurance Company, respondent No.3, stated that the 1st respondent was driving the vehicle without any authority and that he did not have a valid driving licence.

3. Upon the issues being framed, the first issue on the negligence of respondent No.1 in causing the accident was decided in favour of the appellants-claimants and against the respondents, thereby holding respondent No.1 guilty of having driven the “offending vehicle” rashly and negligently, leading to the accident causing the death of Mahender Singh.

No appeal against that finding has been brought to the notice of this Court.

4. On the issue of compensation to be paid, the appellants produced a letter from the Bar Council (Ex.PC), a bank Pass-Book, Ex.PE, Identity Card-cum-Pass-Book, Ex.PF, Payment Note, Exs.PG and PH, showing a deposit of Rs.1,05,071/- and copy of a mutation (Exs.PE/PK), the last to prove that the deceased had agricultural land, in respect of which a “jamabandi” (record of rights) was also produced, Exs. PL/PJ.

It was claimed that the deceased was earning Rs.1000/- as a stipend per month and Rs.1 lac or Rs.1,50,000/- per annum from agricultural income and used to hand over Rs.9000/- per month for household expenses. Respondents No.2 and 3 were stated to be only 3½ years and 2½ years old respectively, at the time of their fathers' unfortunate death.

Respondent No.4, i.e. mother of the deceased, was stated to be 60 to 65 years old and with the father of the deceased already having expired, the appellants were stated to be all dependent upon the deceased for their livelihood.

The respondent-Insurance Company contested the aforesaid claim stating that there was no evidence to show that the deceased was earning Rs.9000/- per month.

5. Having appraised the evidence led before it, the Tribunal came to the conclusion that in the year 1997, the deceased had earned Rs.1,05,071/-, including a stipend of Rs.1000/- (presumably being an Advocate with a senior). As regards the agricultural land, it was held that the appellants were obviously still earning from it, though they had stated that they had to engage a Manager to look after it. Taking the pay of the Manager to be Rs.1800/- per month (on a presumption), the Tribunal held the income of the deceased, for the purpose of computation of compensation, to be Rs.2800/- per month. Deducting 1/3rd of the said amount towards the personal expenses of the deceased, the loss of income to the appellants-claimants was assessed to be Rs.1900/- per month, with the annual dependency consequently working out to Rs.22,000/-.

Accepting the age of the deceased to be 34 years, a multiplier of 16 was applied, thereby bringing the total loss of dependent income to Rs.3,64,800/-.

That was, thus, the total compensation awarded by the Tribunal, alongwith interest @ 9% per annum, from the date of the filing of the claim petition, till the realization of the aforesaid amount. Of the compensation amount, Rs.25,000/- was directed to be paid to appellant No.4, i.e. the mother of the deceased and Rs.50,000/- each to appellants No.2 and 3, i.e. the children of the deceased, by way of fixed deposits in a nationalized bank till they attained majority. The remaining compensation of Rs.2,39,000/- was ordered to be paid to appellant No.1.

6. Mr. Naresh Kumar, learned counsel appearing for the appellants, submitted that, firstly, the Tribunal had erred in holding that the income of the deceased was Rs.2800/- per month against the claim of Rs.9000/-, in view of the fact that even the Tribunal had admitted that the income of the deceased, for the year 1997, was Rs.10,05,071/- which amounts to Rs.8756/- per month.

He further submitted that no loss of future prospects of income were factored in by the Tribunal and further, strangely, nothing was given to the appellants for loss of consortium, loss of love and affection and even for funeral expenses and last rites. He, therefore, submitted that at least Rs.15,00,000/- should have been awarded by the Tribunal and prayed for the same.

7. None appeared for the respondents before this Court, including the Insurance Company.

It needs to be noticed that this is one of those cases the record of which was burnt in a fire incident which took place in January 2011 and since it was not known whether anybody had earlier appeared for the respondents prior to that incident, therefore, notice was ordered to be issued to the respondents again, vide order dated 02.04.2014.

On 30.05.2014, Mr. Sudhir Rana, Advocate, had appeared for respondent No.1 and thereafter, Mr. Banni Thomas, Advocate, had appeared for respondent No.3, i.e. the Insurance Company. Respondent No.2, i.e. the firm that owned the "offending vehicle", is shown to be served as per the order dated 04.02.2015, upon refusal of acceptance of the notice by the Manager of the firm.

Thereafter, on all three dates that the matter came up for hearing, till today, nobody had appeared for the respondents.

8. Having considered the arguments of the learned counsel for the appellants and having considered the Award passed by the Tribunal, I am of the opinion that the appeal deserves to be at least partly allowed.

I find no reason to interfere with the finding on the income of the deceased, in the absence of any evidence to the contrary, inasmuch as there were no income returns led in evidence before the Tribunal to show the professional income of the deceased; yet, the Tribunal still accepted Rs.1000/- to be paid as a stipend to him, obviously by way of professional income.

As regards the agricultural income, even taking that a Manager had been employed by the appellants, though no payment book etc. was produced (to show the same), I find no error in the assessment of Rs.1800/- presumed to have been paid to such Manager, by the appellants, as was concluded by the Tribunal.

The multiplier of 16 applied by the Tribunal is in consonance with the ratio of the judgment in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121, since the deceased was stated to be 34 years of age at the time of his death.

As regards the deduction towards personal expenses, though in terms of *Sarla Vermas' case,* a deduction of $1/4^{th}$ is to be made, where the number of dependents is 4 to 6 (which in the present case are 4), however, this Court is not interfering in that respect, in view of the fact that the major source of income of the deceased was obviously agricultural income, from which he is shown to have earned at least Rs.7000/- to Rs.8000/- per month, with the remaining Rs.1000/- (coming by way of stipend). Hence, though 1/4th of his income has been deducted towards his personal expenses had he remained alive, the fact remains that the agricultural income is still available to the appellants, though they may have had to employ a Manager/other person to help them in agricultural operations. The payment of salary to such person, having been factored in by the Tribunal as part of the loss of income of Rs.2800/-, reduced by 1/3rd, I find no ground to interfere with that finding either.

9. However, I am in agreement with the learned counsel for the appellants that, very strangely, the Tribunal awarded neither any compensation for loss of consortium to appellant No.1, nor any amount for loss of love and affection to respondents No.2 and 3, who were toddlers at the time of the death of their father. Further, no such amount has been awarded to appellant No.4 also, for the loss of love and affection of her son. Consequently, as per the ratio of the law laid down 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, constantly followed thereafter, a sum of Rs.1,00,000/- by way of loss of consortium is awarded to appellant No.1. A sum of Rs.1,50,000/- each is also awarded to appellants No.2 and 3 for the loss of love and affection and care and guidance of their father, though in fact, even such amount is highly inadequate, in my opinion, considering that they were both less than four years of age and at that age, lost the parental love, affection and care and guidance of their father.

In terms of the ratio of the judgments of *Rajesh and others vs.*

Rajbir Singh and others and *Vimal Kanwar and others vs. Kishore Dan and others (supra),* a sum Rs.25,000/- is also awarded to appellant No.1 towards expenses for the funeral and last rites of the deceased.

To appellant No.4, a sum of Rs.50,000/- is awarded, on account of the loss of love and affection of her son.

10. Coming now to the issue of loss of future prospects of income. Though in terms of *Sarla Vermas' case,* thereafter followed in *Rajesh and others vs. Rajbir Singh and others* and *Vimal Kanwar and others vs. Kishore Dan and others, (*with the latter cases holding that such loss of future income is also to be factored in, in the case of a self-employed person), in the present case, I do not find myself able to accept that contention of the learned counsel for the appellants, except to a very limited extent, in view of the fact that the agricultural land belonging to the deceased, would still be available to the appellants, even after his death. Thus, what they have lost is any income that he was earning from his profession, which was admittedly only Rs.1000/-, even though the deceased was an Advocate, 34 years of age.

No doubt, he may have reached great heights of his profession with the passage of time had he remained alive, but obviously, not more than 50% of the amount shown to be earned from his profession, can be assessed as loss of future prospects of income. Thus, from the amount of Rs.1000/- that he earned as a stipend, 1/3rd may be deducted towards his personal expenses, thereby making the dependent income of the appellants, from that source of income, to be approximately Rs.700/- per month. As per the ratio of the aforesaid judgments, at the age of 34, 50% of that sum is to be taken to be the base for calculation of loss of future prospects of income, which in this case would be Rs.350/- per month or Rs.4200/- per annum. Multiplying the said amount with 16, the total loss of future prospects of income comes to Rs.67,200/-, and is accordingly awarded.

11. In view of the above, the total compensation awarded to the appellants is as follows:-

i)	Loss of income as assessed by the Tribunal	:	Rs.3,64,800/-
ii)	Loss of future prospects of income	:	Rs.67,200/-
iii)	Loss of consortium to appellant No.1	:	Rs.1,00,000/-
iv)	For funeral and last rites (to appellant No.1)	:	Rs.25,000/-
v)	For loss of love & affection to appellants No.2 & 3	:	Rs.1,50,000/- each =Rs.3,00,000/-
vi)	For loss of love and affection to appellant No.4	:	Rs.50,000/-
	Total	:	Rs.9,07,000/-

Thus, a sum of Rs.5,42,200/- is awarded over and above what was awarded by the Tribunal. Of this enhanced sum of Rs.5,42,200/-, Rs.1,25,000/- (for loss of consortium and last rites) shall be paid to appellant No.1; the component of loss of future prospects of income would be equally divided amongst the four appellants, i.e. they would be paid Rs.16,800/- each. Thus appellant No.1 would be now paid a total sum of Rs.1,41,800/-, appellants No.2 and 3 Rs.1,66,800/- each and appellant No.4, Rs.66,800/- (This is over and above the sums already awarded by the Tribunal).

12. The enhanced amount of compensation shall carry an interest @ 7% per annum, running from the date of the filing of the claim petition, till the realization thereof, again payable to each appellant on her/his respective share of the compensation.

The appeal is thus partly allowed, with no order as to costs.

25.02.2016 **(Amol Rattan Singh)**
dinesh **Judge**