

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.903 of 2002(O&M)

Date of decision: 5.2.2016

Ram Kali & anr.

.....Appellant(s)

Versus

Rakesh Kumar and others

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

* * *

Present: Ms. Parminder Kaur, Advocate for the appellants.

Mr. Krishan Singh, Advocate for respondent No.1.

Mr. Yadvinder Singh Turka, Advocate for respondent No.2
& 2A.

Mr. Eklavya Darshi, Advocate for respondent No.3.

Darshan Singh, J.

1. The present appeal has been preferred against the award dated 20.7.2001 passed by the learned Motor Accident Claims Tribunal, Yamunanagar at Jagadhari whereby the claimants have been awarded the compensation to the tune of ₹ 1,98,000/- on account of death of Rajinder @ Kala in the motor vehicular accident which took place on 13.5.1999.

2. The present appeal has only been preferred for enhancement of the amount of compensation.

3. Learned counsel for the appellants contended that the deceased was a driver by profession and was getting ₹ 3,000/- per month as salary but the learned Tribunal has wrongly taken his income to be ₹ 2900/- per month. She further contended that no

future prospects has been awarded towards the income of the deceased. Multiplier has also been wrongly applied as per the age of the parents. The deceased was only 21 years of age and multiplier of 18 should have been applied. The funeral expenses have only been awarded ₹ 3,000/-. Thus, she contended that the Tribunal has not awarded the just and appropriate compensation. She further contended that no amount on account of loss of love and affection has been awarded to the mother of the deceased.

4. Learned counsel for the respondent-Insurance Company contended that the income of the deceased has been rightly taken into consideration by the learned Tribunal. He was not holding any permanent post getting regular increments. So, the claimants were not entitled for any future prospects towards the income of the deceased. He further contended that the learned Tribunal has rightly awarded the compensation under other heads. Thus, he contended that the compensation awarded by the learned Tribunal is just and appropriate.

5. I have duly considered the aforesaid contentions.

6. The claim petition was filed by the appellants for grant of compensation on account of the death of their son Rajinder @ Kala who was 21 years of age and was employed as a driver on the Tata Sumo which was involved in this very accident. So, the profession of the deceased is not disputed. The claimants have examined respondent No.4 Daljit Singh as RW-2 who deposed that Rajinder Kumar was employed by him as a driver on his Tata Sumo and he was paying him ₹ 3,000/- per month as salary. There is nothing to

disbelieve the statement of Daljit Singh that the deceased was a driver as a profession and his salary cannot be less than ₹ 3,000/- per month. The learned Tribunal has not given any reason as to why the salary of the deceased was taken to be ₹ 2900/- per month instead of ₹ 3,000/- per month. So, the income of the deceased shall be taken to be ₹ 3,000/- per month.

7. It is not disputed that the deceased was employed as a driver. So, he was self employed person. The Hon'ble Apex Court in case **Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304**, the future prospects were allowed in case of the self-employed person following the observations in **Rajesh and others Vs. Rajbir Singh and others** (supra), wherein it was laid down as under :-

“11. As far as future prospects are concerned, in **Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54**, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote:

“8. Since, the Court in **Santosh Devi** case actually intended to follow the principle in the case of salaried persons as laid down in **Sarla Verma** case 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.”

The deceased being of the age of 21 years, 50% is the required addition.”

8. In view of the aforesaid rule of law laid down by the Hon'ble Apex Court, the claimants shall be entitled to the future prospects to the extent of 50% keeping in view the age of the deceased. Thus, after adding the future prospects of 50%, the monthly income of the deceased comes to ₹ 4,500/-. The learned Tribunal has rightly deducted 50% towards the personal and living expenses of the deceased as he was a bachelor so, the remainder comes to ₹ 2250/- per month i.e. ₹ 27,000/- per annum. As per the law laid down by the Hon'ble Apex Court in **Munna Lal Jain's case** (supra), the multiplier is to be applied as per the age of deceased and not as per the age of the dependents. So, the multiplier of 18 shall be applicable as the deceased was only 21 years of age at the time of accident. Thus, the multiplicand comes to ₹ 4,86,000/-.

9. The learned Tribunal has awarded only ₹ 3,000/- towards funeral charges which are enhanced to ₹ 25,000/-.

10. No amount has been awarded by the learned Tribunal to the mother of the deceased on account of loss of love and affection. The mother of the deceased is also entitled to get the compensation on account of loss or love and affection of her son. She will be entitled to a sum of ₹ 50,000/- on account of loss of love and affection. Reference can be made to cases **Rajesh's case** (supra)

and **Asha Verman and others versus Maharaj Singh and others**

2015 (2) RCR (Civil) 520.

11. Now the total amount of compensation comes to ₹ 5,61,000/-. The learned Tribunal has held deceased Rajinder Singh @ Kala to be contributory negligent for causing the accident to the extent of 25%. So, 25% of the amount of compensation is to be deducted which comes to ₹ 1,40,250/-. The remaining amount payable to the claimants as compensation comes to ₹ 4,20,750/-.

12. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation awarded to the appellant-claimants is enhanced from ₹ 1,98,000/- to ₹ 4,20,750/-. The claimant shall be entitled to interest @ 7.5 % per annum on the enhanced amount from the date of the institution of the claim petition till the realization. The liability to pay the compensation and mode of disbursement shall be as per the award of the learned Tribunal.

February 05, 2016
ps

(DARSHAN SINGH)
JUDGE