IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1054 of 1991
Date of Decision: 15.01.2016

Sanjay Kumar and another

......Appellants

Vs.

Jaswant Singh and others

.........Respondents

2. FAO No. 1056 of 1991

Parmod Kumar and another

.....Appellants

vs.

Jaswant Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.P.S. Ahluwalia, Advocate,
for the appellants.

Mr. V. Ramaswaroop, Advocate,
for respondents No. 1 and 2 (in both the appeals).

Mr. B.S. Taunque, Advocate,
for respondent No. 4-National Insurance Co. Ltd.

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AMOL RATTAN SINGH, J. (ORAL)

These two appeals arise out of the award of the learned Motor Accidents Claims Tribunal, Kurukshetra, dated 29.04.1991. The four appellants (two in each appeal) had filed claim petitions under Section 166 of the Motor Vehicles Act, 1988, before the learned Tribunal.

2. The facts giving rise to the filing of claim petition are that on 01.02.1990 at about 8:40 a.m., Chander Mohan Verma, aged 24 years, Smt. Sunita, wife of Sanjay Kumar, aged 22 years (later shown to be 33 years) and Smt. Sangeeta (later shown to be Sanjogta) wife of Parmod Kumar, aged 35 years, were coming from Delhi towards Ambala in Maruti Car No. DBD-1053, driven by Chander Mohan Verma. When the car reached the Shahabad barrier on the G.T. Road, a bus of the Delhi Transport Corporation, bearing registration No. DEP-9933, driven by respondent No. 1, is stated to have come from the opposite direction. The case set up was that the bus was being driven in a very rash and negligent manner and was at a high speed. It struck against the car and dragged it for a long distance, as a result of which all the occupants of the car, including Chander Mohan Verma, Smt. Sunita and Smt. Sanjogta, unfortunately died on the spot. An FIR is also stated to have been registered at 10:05 a.m., on the same date, by one Raman Kumar, against respondent No. 1, for the alleged commission of offences punishable under Sections 279/337/338/304-A of the IPC. A site plan exhibited as Ex. P-10 was prepared by SI Avtar Singh and photographs of the same are also stated to have been taken.

However, a finding of negligence having been arrived at against respondent No. 1 and it not being under challenge by any of the respondents, the only issue to be considered by this Court is as to whether the compensation awarded to the appellants is adequate or not.

FAO No. 1054 of 1991

3. The appellants in this appeal are Sanjay Kumar and his minor son Hamanshu, who sought a compensation of ₹5,00,000/- on account of the death of Sunita, wife of appellant No. 1 and mother of appellant No. 2.

4. It was claimed that Smt. Sunita was a matriculate who, other than household work, also used to stitch clothes for M/s Deepak Garments, Ambala City, on a contract basis and her monthly income was about ₹1,500/- from that work. Other than that loss of income, it was contended before the Tribunal that appellant No. 1 had to engage a servant to do the household work, at a monthly pay of ₹500/-

One Joginder Pal Kochar, owner of M/s Deepak Garments, Amabala City, appeared as a witness and stated that the late Sunita, as also the other deceased lady, Smt. Sanjogta (in respect of whose death the accompanying appeal has been filed), both used to take cloth from him for stitching and they used to stitch them and used to earn ₹1,000/- to ₹1,500/- per month from him, for the said work.

However, on cross-examination, he stated that he had not kept any kind of record for the work done by the deceased, as they were daily wage workers and used to stitch clothes at home, on contract basis.

One Shanti Devi also appeared as PW-3 and stated that she was working in the house of the appellants at a monthly salary of ₹500/-, though no receipt in respect of the said salary given to her, was produced by the first appellant.

5. Having considered the above evidence, the Tribunal came to a conclusion that the monthly income of the late Sunita was not more than ₹600/-.

Of the said amount, the Tribunal deducted ₹200/- per month towards personal expenses of the deceased and therefore, calculated the loss of dependency to the claimants (appellants here), to be ₹400/- per month or ₹4,800/- per annum. The annual dependency was multiplied with a multiplier of 16, in view of the fact that late Sunita Devi was accepted to be 33 years old and consequently, the total loss of income was assessed at ₹76,800/-.

The monthly salary of the maid servant was taken to be only ₹250/- per month, in view of the fact that she also deposed that she was working at the house of the claimants in the other case (Parmod Kumar). Thus, ₹3,000/- as annual expenditure on account of having to engage a maid servant, was also taken as an additional expense incurred by the appellants. However, the total loss of income on account of engaging a maid servant was taken by the Tribunal to be ₹30,000/-, on the premise that no maid servant would be needed for more than 10 years, possibly keeping in view the fact that appellant No. 2 (Hamanshu), was a one and half year old child.

Therefore, the total compensation, including ₹2,000/- awarded for last rites, was assessed at ₹1,08,800/- (₹76,800/- + ₹30,000/- + ₹2,000/-).

FAO No. 1056 of 1991

6. In this appeal, the claim petition was filed on account of death of Mrs. Sanjogta (described initially in the judgment of the Tribunal as Sangeeta), wife of appellant No. 1 and mother of appellant No. 2. Appellant No. 2 is stated to be the minor son, aged 15 years at the time of the death of his mother. Another child of the appellant is also stated to have unfortunately died in the same accident, along with his mother. Sanjogta is stated to have been 35 years old and appellant No. 1 (Parmod Kumar), 40 years old. The same case as was set up by the appellants in FAO No. 1054 of 1991, was also set up by the appellants, before the Tribunal, with one difference, that appellant No. 1 also stated that since his wife used to teach their children, now he had to keep a tutor for his son, i.e. appellant No. 2, for which he spent a sum of ₹500/- per month.

The same witnesses as had appeared in the other case also appeared in the claim petition out of which this appeal arises and the Tribunal also assessed exactly the same amount of income earned by the deceased Sanjogta as was in the case of Sunita, i.e. ₹4,800/- per annum. The same multiplier of 16 having been applied, with the same deduction towards personal expenses, the total loss of income was again assessed at ₹76,800/-. Similarly ₹30,000/- was awarded on account of having engaged a maid servant @ ₹250/- per month and additionally, ₹200/- per month was ordered to be paid as compensation for expenses of a tutor, thereby assessing a compensation of

₹2,400/- per annum for a period of three years, since appellant No. 2 was studying in Class XII. The total compensation on this account was, therefore, ordered to be ₹7,200/-.

Thus, the total compensation, including ₹2,000/- awarded for last rites, was assessed at ₹1,16,000/- (₹76,800/- + ₹30,000/- + ₹7,200/- + ₹2000/-).

7. Mr. R.P.S. Ahluwalia, learned counsel appearing for the appellants in both these cases, submitted that the aforesaid compensation of ₹1,08,800/- for the death of Sunita and ₹1,16,000/- for the death of Sanjogta, was highly inadequate inasmuch as, no compensation was awarded towards loss of consortium, towards loss of love and affection of the mother for the children in each case and for the cost of litigation. He further submitted that the loss of income assessed at only ₹76,800/- was also wholly inadequate, inasmuch as the monthly income of ₹600/-, even for a household lady, was an extremely meagre amount. Also, the amount of ₹2,000/- awarded in each case towards the funeral expenses, was again very low and in terms of settled law, at least ₹25,000/- should have been awarded in this regard.

He relied upon a judgment of the hon'ble Supreme Court, in **Anjani Singh and others** vs. **Salauddin and others** (2014) 15 SCC 582.

In that case, the accident had taken place on 17.09.1997 and ₹1,00,000/- was awarded to the widow of the deceased towards loss of consortium, as also ₹1,00,000/- for loss of love and affection of their father, to the children.

Learned counsel next relied upon another judgment in **Arun Kumar Agrawal** vs. **National Insurance Co.** (2010) 3 SCC (Civil) 664.

In the said case, before the Supreme Court, the deceased was also a housewife, who had died in a motor vehicle accident in the year 2012 and ₹7,000/- per month was assessed as her income/contribution towards the household income, even as a housewife. ₹1,00,000/- as loss of consortium and ₹25,000/- on account of funeral expenses was awarded in that case also.

8 Confronted with the aforesaid judgment, Mr. V. Ramaswaroop, learned counsel for the respondent-Delhi Transport Corporation, submitted that whereas he could obviously not refute the law on the subject, however, the fact that in the cases relied upon by learned counsel for the appellants, the accidents were of the year 1997 and 2012 and the accident in question in the present appeals of the year 1990, would need to be taken into consideration while assessing the loss of income on account of the death of two ladies, who were both homemakers. He, therefore, submitted that at best the judgment in **Arun Kumar Agrawals'** case (supra), can be followed wherein it was laid down that in the case of a lady during household work, the annual income should be assessed as per clause 6 of the 2nd Schedule contained in the Motor Vehicles Act, 1988.

9 Having considered the arguments of the learned counsel for the parties, as regards the assessment of income, in my opinion, the judgment cited by learned counsel for the

respondents would be more applicable to the case at hand, in view of the fact that the income claimed by the appellants in all these appeals, before the Tribunal, to be that of the two deceased ladies, was ₹1,500/- per month. Hence, in any case no more than that income, as was claimed by them, can be assessed and if the ratio of the aforesaid judgment is applied, it is seen that in respect of non-earning persons, the annual income is to be assessed at ₹15,000/- per annum or ₹1,250/- per month, in terms of the 2nd Schedule of the Act of 1988.

Accordingly, the same income is assessed as the income of the two ladies, i.e. Sunita, on account of whose death FAO No. 1054 of 1991 has been filed and Sanjogta, for whose death FAO No. 1056 of 1991 has been filed.

Seen that the number of dependents (in each case) is two, applying the ratio of **Smt. Sarla Verma and others** vs. **Delhi Transport Corporation and another** (2009) 6 SCC 121, a cut of 1/3rd of that amount (₹15,000/-), as was applied by the Tribunal, is applied, leading to the dependent income to be ₹10,000/- per annum. To that a multiplier of 16, as was applied by the Tribunal, is applied in each case, both the ladies being 30 to 35 years of age. The loss of dependent income, therefore, comes to ₹1,60,000/- in each appeal.

Towards loss of consortium to appellants No. 1 (in each of the two appeals), a sum of ₹1,00,000/- is awarded; towards loss of love and affection and care of his mother, appellant No. 2 (in FAO No. 1054 of 1991), is awarded

₹2,00,000/- he being only one and half years of age at the time of the death of his mother.

In the case of appellant No. 2 in FAO No. 1056 of 1991, he being 15 years of age at the time of the death of his mother (Sanjogta), ₹1,00,000/- is awarded under the same head.

10. In each case, funeral and last rites expenses to the tune of ₹ 20,000/- is awarded, in terms of the ratio of the judgment in **Rajesh and others** vs. **Rajbir Singh and othes** (2013) 9 SCC 54 as also **Vimal Kanwar** vs. **Kishore Dan** (2013) 7 SCC 476. Though in those cases ₹25,000/- had been awarded, one case (Rajesh vs. Rajbir) was pertaining to an accident of the year 2007 and the other (Vimal Kanwar vs. Kishore Dan) of the year 1996, whereas in the present case it is an accident of February 1990. Thus, a slightly less compensation on account of funeral and last rites expenses is being awarded.

The other amounts awarded by the Tribunal in respect of employment of a maid servant (in each case) and towards tuition expenses (only in the case of appellant No. 2 in FAO No. 1056 of 1991), are maintained.

Hence, the compensation now awarded to the appellants in each case is as follows:-

in FAO No. 1054 of 1991

(i) Loss of dependent income:- ₹1,60,000/-

(ii) Loss of consortium to appellant No. 1:- ₹1,00,000/-

(iii) Loss of love and affection

	to appellant No. 2:-	₹2,00,000/-
(iv)	Funeral and last rites expenses:-	₹20,000/-
(v)	Expenses towards a maid servant:-	₹30,000/-
	Total	₹5,10,000/-

The compensation awarded by the Tribunal was ₹1,08,800/-. Thus, a sum of ₹4,01,200/-, over and above the amount awarded by the Tribunal is now awarded to the appellants.

<u>in FAO No. 1056 of 1991</u>

(i)	Loss of dependent income:-	₹1,60,000/-
(ii)	Loss of consortium to appellant No. 1:-	₹1,00,000/-
(iii)	Loss of love and affection to appellant No. 2:-	₹1,00,000/-
(iv)	Funeral and last rites expenses:-	₹20,000/-
(v)	Expenses towards a maid servant:-	₹30,000/-
(vi)	Expenses for tuition	₹7,200
	Total	₹4,17,200/-

Rounded off to ₹4,17,000/-

The compensation awarded by the Tribunal was ₹1,16,000/-. Thus, a sum of ₹3,01,000/-, over and above the amount awarded by the Tribunal is now warded to the appellants.

13. The enhanced amounts, i.e. ₹4,01,200/- (in FAO No. 1054 of 1991) and ₹3,01,000/- (in FAO No. 1056 of 1991), shall carry an interest of 7.5% per annum, running from the date of filing of the claim petitions, till the date of realization of the said amount.

FAO No. 1054 of 1991 is according allowed, with no order as to costs.

FAO No. 1056 of 1991 is partly allowed, again with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

January 15, 2016
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