IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.558 of 1994
Date of Decision: 13.05.2016

Surjit Kaur and others ....Appellants

Vs.

Ghani Sham and others ....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vinod Arya, Advocate for
for the appellants.
None for the respondents

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

Amol Rattan Singh, J (Oral)

1. This is an appeal by the claimants, against the Award of the learned Motor Accident Claims Tribunal, Chandigarh, by which they seek enhancement of the compensation of Rs.2,04,000/-, awarded by the learned Tribunal, to them, for the death of late Major Tarlochan Singh.

The deceased was the husband of appellant No.1 and father of appellants No.2 to 4 herein, i.e. the claimants.

2. The facts, as taken from the Award of the learned Tribunal, are that Major Tarlochan Singh (Retd.), was travelling on a scooter bearing registration No.HNX-2242 from Mohali to Chandigarh on 20.7.1991. When he reached near Palsoura, a DCM Toyota vehicle bearing registration No.HR-29-B-4021, came from behind, travelling in the same direction as the deceased, allegedly at a very fast speed, and hit the scooter, due to

which the deceased fell on to the road and died on the spot.

The said accident is stated to have been witnessed by many persons, including Baldev Singh and Shiv Ram, who raised an alarm, upon which SI Hazura Singh, who was on duty at that place, chased the 'offending vehicle' and stopped it near the barrier at Village Badheri and arrested the driver of the vehicle, i.e. respondent No.1 herein.

3. In the claim petition filed, it was further stated that the deceased was 54-1/2 years of age, earning pension from the Army and was also employed with the Golden Lion PH&HP Area Canteen, Ropar, i.e. the Army Canteen, from where he was drawing a total salary of Rs.5293/- per month.

4. On notice issued, only the insurance company, i.e. present respondent No.5, with which the DCM Toyota vehicle was insured, appeared and filed a written statement, in which the entire claim petition was denied and it was further stated that respondent No.1 was not holding a valid driving licence and as such, in any case the company was not liable to pay compensation.

The remaining respondents not having filed any written statement despite opportunities granted, their defence was struck off by an order of the learned Tribunal.

5. Upon the pleadings filed, the usual issues of attribution of negligence, amount of compensation payable and validity of driving licence of respondent No.1 were framed, and after appraising the evidence led, including the testimonies of eye witnesses, the issue of negligence was decided in favour of the claimants, against the respondents.

No appeal against the said finding or any appeal filed by the respondents, against any finding of the learned Tribunal, has been brought to the notice of this Court.

Thus, it is the only issue of adequacy or inadequacy of the compensation awarded by the learned Tribunal, that is to be gone into by this Court.

6. As regards compensation, appellant-claimant No.1, i.e. Surjit Kaur, widow of the deceased, deposed that her husband had retired as a Major from the Army and was getting Rs.2500/- per month as pension and was also re-employed as a Manager in the Canteen Stores Department, from where he was getting a salary of Rs.3,000/- per month.

Whereas the learned Tribunal accepted the salary certificate of the deceased on his re-employment as a Manager in the CSD, it found that the quantum of pension being received by the deceased, from the Army, was not proved, as no document in that regard was placed on record. Though a photostat copy of the order of family pension payable to appellant No.1 was placed on record, showing that she would receive Rs.12,00/- per month as such family pension, the said photocopy was not accepted as proof of the pension that the deceased was getting.

Thus, taking the salary of the deceased to be Rs.2600/-per month, a 1/3rd deduction was made to that amount, towards the personal expenses of the deceased, leaving the loss of dependent income to the claimants to be Rs.1700/- per month.

7. Accepted the age of the deceased to be 55 years, as per the post mortem report, a multiplier of '10' was applied by the Tribunal and a total

compensation of Rs.2,04,000/-was awarded, (which actually was the amount of loss of dependent income only).

The driving licence of respondent No.1 having been found to be valid, all five respondents, i.e. the driver, financiers, the owner and the insurer of the “offending vehicle”, were held jointly and severally liable to pay the compensation amount.

8. Learned counsel for the appellants submits that though the deceased retired as a Major and was receiving pension in addition to the salary that he was receiving on re-employment as a Manager of the Canteen Stores Department (CSD), the said pension has not been factored in by the learned Tribunal, while calculating the compensation under the head of 'loss of income'.

Other than that, the learned counsel submits that the multiplier applied by the learned Tribunal was also incorrect, inasmuch as, the deceased admittedly being 54-1/2 years of age at the time of his death, a multiplier of '11' instead of '10' should have been applied, in terms of the ratio of law laid down by the Supreme Court in the case of **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121, and further, since he had 4 dependents, i.e. the present appellants (claimants before the Tribunal), who are his widow, two daughters and a minor son, 1/4th of the salary of the deceased, that he was getting as such Manager of the CSD, should have been deducted towards his personal expenses, in terms of the ratio of the aforesaid judgment, whereas the Tribunal has deducted a 1/3rd amount.

Learned counsel further submits that no amount, whatsoever, has been awarded by way of loss of consortium to appellant No.1, or by way of loss of love and affection to appellants No.2, 3, and 4, or towards funeral expenses and loss of future prospects of income.

9. Having heard learned counsel for the appellants, none having appeared for the respondents, as regards the issue of non-factoring in of the pension received by the late Major Tarlochan Singh, it is seen that no evidence in that regard was led by the appellants, as to the amount of actual pension he was receiving, though appellant No.1 had produced a photostat copy of an order showing that she was receiving a family pension of Rs.1260/- per month.

Other than the fact that only a photocopy even of that document was produced, with nobody from the relevant department of the Ministry of Defence/Army Authorities examined, to prove the family pension, no benefit of such loss of pension could have been granted, in the absence of any evidence led to as to the exact amount of pension of the deceased, even though, otherwise, normally a widow receives about 50% of her husbands' pension, as her family pension.

10. However, as regards the other contention, it is seen that indeed a multiplier of '11' instead of '10' should be applied, in view of the aforesaid judgment of the hon'ble Supreme Court and further, the number of dependents on the deceased (the claimant) being four, a $1/4^{th}$ and not $1/3^{rd}$ amount of the income of the deceased, from his salary as a Manager of the CSD, should have been deducted towards his personal expenses, and the loss of income accordingly calculated thereafter.

Hence, as regards the head of loss of actual income, it would be calculated as follows:-

1) Actual income of the deceased : Rs.2600/- per month
as per salary certificate proved

2) Deduction towards personal : Rs.650/- per month
1/4th expenses of the deceased

3) Loss of monthly dependent : Rs. 1950/- per month.
income to the appellants

The annual loss of income would, therefore, work out to be Rs.23,400/- per annum, to which a multiplier of '11' is to be applied, thereby coming to the total loss of income to the appellants to be Rs.2,57,400/-.

A sum of Rs.1,00,000/- is also awarded towards loss of consortium to appellant No.1 and Rs.50,000/- each for the loss of love and affection of their father, to appellants No.2, 3 and 4.

11. It is to be noticed though appellant No.4 was a minor, being 15 years of age, and normally this Court has been awarding Rs.1,00,000/- to Rs.1,50,000/- towards loss of love and affection, care and guidance of a parent of a minor child, however, keeping in view the age of appellant No.4, i.e. 15 years, Rs.50,000/- compensation is considered appropriate, even though not adequate.

12. Next, as per the ratio of the judgments of the Supreme Court in Rajesh and others v. 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.25,000/- is awarded to appellant No. 1 towards the funeral expenses and last rites of the deceased.

13. Coming to the issue of loss of future prospects of income.

In this respect, it needs to be noticed that in Sarla Vermas' case (supra) it was held that where the deceased was below 40 years of age, 50% of his actual salary would be added to such actual salary to calculate the loss of future prospects of income. Where the deceased was between the age group of 40-50 years, 30% of his actual salary was to be added.

This principle was reiterated by the Supreme Court in **Reshma Kumari Vs. Madan Mohan,** (2013) 9 SCC 65, after considering the entire law on the subject.

However, in **Rajesh Vs. Rajbir** (supra), their Lordships, after noticing what was held in Sarla Vermas' case, held that where the deceased was between the age group of 50-60 years, an addition of 15% of his actual income should be added to his actual income.

Going by the aforesaid ratio of the judgment, it would obviously be otherwise applicable in the present case, though the issue of payability of loss of future prospects of income to claimants in motor vehicle accident cases, on the basis of the ratio of the judgment in Rajeshs' case, is under consideration of the hon'ble Supreme Court in the case of **National Insurance Co. Vs. Pushpa and others**, (2015) 9 SCC 166, for the reason that in Rajeshs' case, the judgment in Reshma Kumaris' case was not brought to the notice of the Bench and consequently, was not taken into consideration.

14. Though in the present case, the deceased was obviously receiving a pension, the exact quantum of which was however, not proved, and consequently has not been taken into consideration either by the Tribunal or by this Court, while calculating the loss of actual dependent income to the appellants-claimants, nevertheless the fact remains that it was accepted by the Tribunal that the deceased was a retired Major in the Army,

re-employed as a Manager with the Army Canteen Stores Department (CSD), on a fixed salary of Rs.2600/- per month.

Without a doubt, the period of re-employment is not known but factually, obviously the deceased would have been earning some amount of pension, possibly about Rs.2400/- per month, going by the photocopy of the family pension payable to appellant No.1, for an amount of Rs.1200/- per month.

Yet, the pension of the deceased, not having been proved exactly, that pension obviously cannot be factored in even to calculate the loss of future prospects of dependent income.

Since the pension that he was getting has not been factored in to calculate the loss of dependent income of the claimants, it would therefore, be appropriate to take his salary in his re-employed capacity, at least, into consideration for calculating the loss of future prospects of income, his permanent pension (with possible increases thereto in the future) having been ignored.

15. The question, therefore, is that even accepting that the deceased, would have received a permanent income for the rest of his life, if not from the salary in his re-employed capacity, but at least from the pension that he was getting from the Army, the issue still would be as to whether the judgment in Sarla Vermas' and Reshma Kumaris' cases is to be followed, or the judgment in Rajesh vs. Rajbir is to be followed, where the claimants were held entitled to loss of future prospects of income to the extent of 15% of the income of the deceased, even when the deceased was between the age group of 50-60 years.

Since the matter has been referred to a larger Bench of the

Supreme Court to settle the law on it, in view of the divergent opinions expressed in Reshma Kumaris' and Rajeshs' cases, this Court feels it would be appropriate to calculate the loss of future prospects of income to the appellants, on the basis of law laid down in Rajesh vs. Rajbirs' case, but to not entitle the appellants to disbursement of the amount so calculated by this Court, till the final decision of the hon'ble Supreme Court (larger Bench) in Pushpas' case.

Accordingly, the calculation is made hereinafter.

16. The monthly salary of the deceased being Rs.2600/-, and he being 54½ years old, then in terms of Rajesh vs. Rajbirs' case, 15% of that amount is to be taken to be the loss of his future prospects of income. That amount comes to Rs.390/- per month, from which a $1/4^{th}$ deduction is to be made towards the personal expenses of the deceased had he continued to live.

Thus, from Rs.390/-, Rs.98/- are to be deducted, coming to a loss of monthly future prospects of dependent income to the appellants, to be Rs.293/- per month, or Rs.3516/- annually.

To the aforesaid sum, a multiplier of '11' is to be applied, thereby bringing the total loss of future prospects of dependent income to the appellants to be Rs.38,676/-

Hence, the aforesaid sum shall be deposited by the Insurance Company (respondent No.5), with the Tribunal, along with 6% interest upon it running from the date of the filing of the claim petition till the date of such deposit with the Tribunal.

The Tribunal shall, thereafter, have the aforesaid amount along with the interest thereupon, deposited in a fixed deposit with a nationalized

Bank, immediately upon such deposit being made by the respondent No.5, i.e. United India Insurance Co. with the Tribunal, the said company being the insurer of the DCM Tyota Vehicle bearing registration No.HR-29-B-4021 at the time of the accident in the year 1991.

If the ratio of the judgment of the Supreme Court in Pushpas' case (supra) comes in favour of the appellants, to the extent that in the matters of motor vehicle accident cases, where the deceased was between the age group of 50-60 years, the claimants are entitled to receive 15% of the loss of existent dependent income, by way of loss of future prospects of such dependent income, then the amount so deposited by respondent No.5 with the Tribunal (and subsequently in a fixed deposit), shall be disbursable to the appellants herein, along with interest as would have accrued upon the amount in such fixed deposit, in the manner that an Award of the Tribunal is executed, without further reference to this Court.

If on the other hand, the ratio of the judgment of the Supreme Court in Pushpas' case is that such claimants are not entitled to loss of future prospects of dependent income, then respondent No.5 would be entitled to have the entire amount refunded to itself, along with interest that would have accrued in the fixed deposit, upon making an application to that effect in the Tribunal.

17. Consequently, the compensation now awarded to the appellants is as follows (less the loss of future prospects of dependent income):-

1.Loss of Income	:Rs.2,57,400/-
2. Loss of consortium	:Rs.1,00,000/- (to appellant No.1)
3.Loss of love and affection	:Rs.1,50,000/-

(Rs.50,000/- each to appellants No.2, 3 and 4)

4.Funeral expenses :Rs.25,000/-
(to appellant No. 1)

5.Loss of future prospects of income: Rs.25,740/-
Total: Rs.5,32,400/-

The above sum is, thus, Rs.3,28,400/- over and above the compensation of Rs.2,04,000/- awarded by the Tribunal.

The enhanced amount of compensation would carry an interest @ 6% p.a., running from the date of filing of the claim petition, till the date of actual realization thereof.

The appeal is allowed in the above terms.

May 13 , 2016 **(AMOL RATTAN SINGH)**
vcgarg/pk **JUDGE**