

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

(1)

**Regular Second Appeal No.1580 of 1989 (O&M)
Date of Decision: August 10, 2016.**

Chaman Lal and another

.....APPELLANT(s).

VERSUS

Smt. Kailash Rani and others

.....RESPONDENT(s).

(2)

Regular Second Appeal No.563 of 1991 (O&M)

Smt. Kailash Rani and another

.....APPELLANT(s).

VERSUS

Joginder Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: None for the appellants in RSA-1580-1989
 and for respondents No.3 and 4 in RSA-563-1991.

Mr. Kewal Singh, Advocate
for respondents No.1 and 2 in RSA-1580-1989
and for appellants in RSA-563-1991.

SURINDER GUPTA, J.

Both these appeals have been taken up together for disposal as the same arise from the judgment and decree dated 25.05.1989 passed by learned Additional District Judge, Sirsa. While plaintiffs Kailash Rani and her minor daughter filed RSA No.563 of 1991 claiming enhancement of compensation for the murder of Devi Dayal husband of plaintiff No.1

Kailash Devi and father of plaintiff No.2-Mst. Rachna, whereas defendants Chaman Lal and Puran Chand filed RSA No.1580 of 1989 seeking relief of setting aside the judgment passed by the Courts below allowing compensation to the plaintiffs.

(For the sake of convenience, hereinafter the parties will be referred as plaintiffs and defendants as per the civil suit.)

2. The case of the plaintiffs, in brief, is that Devi Dayal was attacked by defendants Joginder Singh alias Davinder Singh alias Narinder Singh, Satnam Singh, Chaman Lal (appellant), Puran Chand (appellant) and Bachan Singh on 19.02.1981 and caused serious injuries with their weapons, resulting in his death at the spot. The matter was reported to the police and a case under Section 302 read with Section 148 Indian Penal Code and under Arms Act was registered. The motive for the occurrence was that Devi Dayal along with his brother, father and father-in-law was facing trial for the murder of one Munshi Ram and for causing injuries to defendant Bachan Singh and others. Police after investigation in this case presented challan in Court and trial was conducted, wherein defendants Joginder Singh, Satnam Singh and Chaman Lal were convicted and sentenced by learned Sessions Judge, Hisar vide judgment dated 25.10.1982. However, defendants Puran Chand and Bachan Singh were given the benefit of doubt and acquitted.

3. At the time of incident, Devi Dayal was 25 years of age and was maintaining good health. He was cultivating about 50 acres of land of his brother-in-law and also used to drive tractor bearing registration No.RJK-4676. He was having side business of dairy farming and

electrician, thereby earning ₹10,000/- per annum.

4. The defendants contested the claim of the plaintiffs and alleged that Devi Dayal was unemployed and was of extravagant habits. After his death, the plaintiffs are having sufficient income to support themselves.

5. Then Sub Judge 1st Class, Sirsa accepted the contention of plaintiffs and allowed compensation of ₹1,06,656/-, which was computed as follows:-

(i)	Income of the deceased	: ₹10,000 per annum
(ii)	Age of the deceased	: 25 years
(iii)	Deduction towards personal expenses	: 1/3 rd
(iv)	Multiplier applied	: 16
(v)	Total compensation	: 6666X16= ₹1,06,656/-

6. Not satisfied, the plaintiffs filed Civil Appeal No.160 of 1988 before the first Appellate Court seeking enhancement of the compensation, while defendants Chaman Lal, Puran Chand, Bachan Singh filed Civil Appeal No.156 of 1988 and defendants Joginder Singh and Satnam Singh filed separate appeal i.e. Civil Appeal No.159 of 1988 for setting aside the judgment dated 03.09.1988 passed by then Sub Judge 1st Class, Sirsa allowing compensation to the plaintiffs. The first Appellate Court discarded the pleas of both the parties but at the same time, reduced the amount of compensation with the observations that the entire amount of ₹1,06,656/- would be available to the plaintiffs in lump sum, as such, it call for reduction. The relevant observations of the first Appellate court on this point are contained in para 17 of the judgment, read as follows:-

“17. After considering arguments of both the sides,

I find considerable force in the contention of the learned counsel for the defendants-appellants, in the light of the case law cited as *Amar Singh Vs. Major Singh etc. (1978 CurLJ 495)* that the amount of Rs.1,06,656/- would be available to the plaintiffs in lump sum and whereas that on the basis of the earning of the deceased Devi Dayal had he been alive, the amount could have been utilised by them in a period of 30 or 35 years. Therefore, in view of the settled law, the defendants-appellants are entitled to the 1/4th reduction keeping in view the factum that the lumpsum payment of the amount of compensation has to be made to the plaintiffs-respondents. After reduction the amount of compensation comes to Rs.79,500/- and to make it round figure, it comes to Rs.80000/-. This amount shall fetch interest as already fixed by the learned trial Court.”

7. I have heard learned counsel for the plaintiffs and have perused the paper book and record of the Courts below with his assistance.

8. Learned counsel for the plaintiffs has argued that the trial Court has awarded a compensation of ₹1,06,656/- which was very moderate amount and the first Appellate Court, without any basis, has reduced the same. The factum which was taken into consideration while reducing the amount of compensation was not applicable to the facts of this case as the defendants were disputing the grant of compensation and were not willing to pay the same so as to seek the reduction on the ground that lump sum amount is being paid to the plaintiffs. Learned counsel for the plaintiff has not sought the enhancement of compensation beyond what had been allowed by then learned Sub Judge.

9. The substantial question of law which arise for consideration in

these appeals is as to ***whether the reduction of compensation by the first Appellate Court on the ground that lump sum amount is being paid, as such, compensation allowed should be reduced by 1/4th is legal and valid?***

10. The first Appellate Court relied on the observations in case of ***Amar Singh etc. Vs. Major Singh etc. (supra)***. In that case, ₹40,000/- of compensation was allowed, which was reduced to ₹30,000/- in view of the fact that plaintiff had claimed only ₹30,000/- as damages.

11. The deceased in this case was 25 years of age. The Tribunal has taken dependency of plaintiffs on the income of the deceased as ₹6,666/- per annum and applied the multiplier of 16. The plaintiffs are not supposed to consume the entire amount of compensation as per the dependency worked out by the Court in one go. Plaintiff No.2 was a minor aged 3 years while plaintiff No.1 wife of deceased was also quite young. To make deduction from the amount of compensation only on the ground that it will be paid in lump sum, is no more a good law. No such deduction is made in any case where the compensation is allowed to the victim in a motor accident case. The amount of compensation is calculated by computing loss/damage to the victim in monetary terms. To further reduce it on the ground that entire payment shall be made in lump sum is neither legal nor in the interest of justice.

12. Hon'ble Apex Court in case of ***Raj Rani Vs. Oriental Insurance Company Limited 2009(13) SCC 654***, observed that payment of lump sum amount is not a ground to deduct 1/3rd from the compensation amount. In this case, the plaintiffs have sought compensation of ₹2 lacs but were allowed only the amount of compensation of ₹1,06,656/-. The

amount in lump sum or sought reduction of compensation amount on this score. No deduction from the amount of compensation as awarded by learned Sub Judge was called for and the first Appellate Court has applied 1/4th reduction in the amount of compensation awarded by learned Sub Judge, without any basis.

13. As a sequel of my above discussion, the substantial question of law framed in these appeals is answered in favour of the plaintiffs. The appeal filed by the plaintiffs has merits and the same is allowed. The judgment and decree passed by the first Appellate Court reducing the amount of compensation awarded to the plaintiffs, is modified and the plaintiffs are allowed compensation as per the judgment and decree passed by then Sub Judge, Sirsa. The plaintiffs shall also be entitled to interest on the amount of compensation as awarded by then Sub Judge, Sirsa from the date of filing of the civil suit till the date of actual payment. Plaintiffs shall also be entitled to costs of this appeal, which will be realised from the judgment-debtors/defendants. Counsel fee is assessed at ₹5,000/-. The appeal filed by the defendants is dismissed.

August 10, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No