IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2207 of 1995 (O&M)
Date of Decision : 06.05.2016

Jarina and others .....Appellants

Versus

Udai Bhan and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Anil Kumar Rana, Advocate
for the appellants.

Mr. Atul Yadav, Advocate
for respondent no. 1.

Mr. Anil Kumar Gahlawat, Advocate
for respondents no. 2 and 3.

Surinder Gupta, J.

This is appeal by claimants-appellants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Gurgaon (later referred to as 'the Tribunal') for death of Hassan Mohammad (later referred to as 'the deceased'), husband of claimant-appellant no. 1, father of claimants-appellants no. 2 and 3 and son of claimants-appellants no. 4 and 5 in a motor vehicle accident with Rajasthan State Roadways Transport Corporation Bus bearing registration no. RJ-14-P-2791 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal is enhancement of compensation sought by appellants, detailed facts of the case are being skipped for the sake of brevity.

3. Case of claimants, in brief, is that on 22.09.1993, the deceased was travelling in his Maruti Van No. DAJ-1665 with Javed, who was driving the Van at a very slow speed. The Van

was hit by the offending vehicle resulting in death of driver of the Van at the spot while the deceased was shifted to Civil Hospital, Ferozepur Jhirka where he succumbed to injuries suffered by him. The deceased was 27 years of age.

4. Claimants have alleged that the deceased had worked as a part time lecturer in Government College, Nagina from 24.10.1992 to 31.03.1993. A few days before his death, he had got himself enrolled as an advocate and was earning ₹5000/- per month. A certificate was produced on record to show that as part time lecturer, the deceased was getting a salary of ₹2500/- per month. The Tribunal, however, took note of the fact that the deceased was an intelligent man and qualified seven written examinations for various public services but he could not be successful in interviews. He got himself enrolled as an advocate on 19.09.1993 i.e. three days before his tragic death. Keeping in view the avenues in life available to the deceased, the Tribunal assessed his monthly income as ₹2500/- and by applying the multiplier of 16, amount of dependency was worked out as ₹3,20,000/- after applying cut of 1/3rd in income of the deceased towards his personal expenses.

5. Learned counsel for the appellants has argued that the deceased was an intelligent person and had flourishing future for him. He left behind his wife, two minor children and parents. Income of the deceased as taken by the Tribunal is on lower side. The Tribunal has wrongly applied deduction of 1/3rd from income of the deceased which should be 1/10th keeping in view observations of the Apex Court in case ***New India Assurance Co.***

***Ltd.* vs. *Gopali and others*, 2012 (3) RCR (Civil) 818**. They are also entitled to compensation for the loss of love and affection care and guidance for minor children, loss of consortium for wife and loss of estate, love and affection for parents of the deceased besides funeral expenses.

6. Learned counsel appearing for respondents have argued that the accident took place in the year 1993 i.e. about 23 years ago. The Tribunal has awarded compensation keeping in view the price index and the needs of life as prevailing at that time. Claimants have been allowed just and reasonable compensation which calls for no further enhancement.

7. At the time of accident, the deceased was not in job and had joined legal profession only three days before his unfortunate death. In the absence of any evidence regarding income of the deceased from tuition work, the Tribunal has rightly relied upon the certificate issued by the College authorities about income of the deceased as ₹2500/- per month. As per observations in cases of ***Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54** and ***Munna Lal Jain and others* vs. *Vipin Kumar Sharma and others*, 2015 (3) RCR (Civil) 447**, claimants are also entitled to 50% addition in income of the deceased towards future prospects. Norms for deduction towards personal expenses were settled in the case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, as per which deduction of 1/4th is to be made when number of dependent family members of deceased in an accident are 4 to 6. These observations were approved by Hon'ble three

Judges Bench of the Apex Court in case of ***Reshma Kumari and ors.*** ***vs.*** ***Madan Mohan and anr.,*** ***2013 (9) SCC 65.*** In view of this, the view taken in ***Reshma Kumari's case (supra)*** is to be preferred over the view taken by Hon'ble two Judges Bench of Apex Court in ***Gopali's case (supra)***.

8. In ***Rajesh's case (supra)***, compensation of ₹1 lac was allowed to minor children of the deceased under the head of loss of love and affection. In that case, accident had taken place on 05.10.2007. In the present case, accident had taken place in the year 1993 i.e. 14 years before the case of ***Rajbir (supra),*** as such, taking into account the price index prevailing at the time of accident in this case, compensation on account of loss of love and affection care and guidance for minor children, loss of consortium for the wife and loss of estate for parents is allowed @ ₹25000/- under each head. Claimants are also allowed compensation of ₹5000/- towards funeral expenses.

9. The Tribunal has applied the multiplier of 16 but keeping in view age of the deceased and as per norms laid down by the Apex Court in ***Sarla Verma's case (supra)***, the multiplier attracted to this case is 17.

10. In view of my discussion above, the compensation to which claimants are entitled is tabulated as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Hassan Mohammad	₹2500 per month
(ii)	50% of (i) above to be added as future prospects	₹2500+₹1250= ₹3750 per month
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	₹3750-₹938 = ₹2812 per month

(iv)	Compensation after multiplier of 17 is applied	(₹2812X12X17) = ₹573648 rounded off to ₹574000
(v)	Loss of consortium for claimant no. 1-wife	₹25000
(vi)	Loss of love and affection care and guidance for claimants no. 2 and 3	₹25000
(vii)	Loss of estate, love and affection for claimants no. 4 and 5	₹25000
(viii)	Funeral & transport expenses	₹5000
	Total	₹654000

11. As a sequel of my above discussion, the appeal is accepted. Award of the Tribunal is modified and compensation allowed to claimants is enhanced from ₹3,20,000/- to ₹6,54,000/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. The enhanced amount of compensation is apportioned amongst claimants as follows

Claimant no. 1-Jarina (wife)	60%
Claimants no. 2 to 5 (children and parents of the deceased)	10% each

12. In the event of any claimant out of claimants no. 2 to 5 is not surviving his/her share will go to claimant no. 1-Jarina. Respondent No. 2 being owner of the offending vehicle will deposit the share of claimants-appellants in their bank accounts or pay the same through demand drafts. Counsel fee is assessed at ₹ 5000/-.

May 06, 2016 **(SURINDER GUPTA)**
jk **JUDGE**