

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1445 of 1996

Date of Decision: 23.11.2016

Jagtar Singh and another

... Appellants

Vs.

Abdul Sharif and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- None.

Amol Rattan Singh, J.

This is an appeal filed by the claimants before the Motor Accident Claims Tribunal, Kurkshetra, seeking enhancement of the compensation of Rs.2,50,000/- awarded to them vide the impugned Award, on account of the unfortunate death of Binder Pal Kaur, wife of the 1st appellant-claimant and mother of the 2nd appellant-claimant, in a motor vehicle accident that took place on 29.04.1994.

Interest @ 12% per annum, running from the date of the filing of the claim petition, till the date of realisation of the compensation amount was also awarded by the Tribunal.

The claim petition filed by the present appellant, bearing no.64 of 1994, was decided by the Tribunal vide the impugned Award, alongwith the two other claim petitions, but no appeal filed by the claimants in those cases has been brought to the notice of this Court. Hence, it is being disposed of as a lone appeal.

The facts, as taken from the impugned Award, are that the first appellant herein, alongwith the deceased and one Ram Lubhaya, were travelling in a Maruti van bearing registration no.PB-08-E-0426, from village Kot Grewal, District Jalandhar, towards Delhi, on the aforesaid date, having started from the village at 10:30 pm. At about 6:00 am when they reached in the area of village Sanwala, near Pipli, a truck bearing registration no.RNG-2324 came from the side of Pipli, allegedly being driven in a rash and negligent manner, on the wrong side of the road it hit the van which was on its own side, resulting in the death of Binder Pal Kaur on the spot and the other occupants of the van receiving injuries. One Lakhbir Kaur was also travelling in the van who was shifted to the PGI, Chandigarh, but succumbed to her injuries subsequently on 01.05.1994.

It was thus claimed that the accident had occurred, leading to the death of Binder Pal Kaur, on account of the rash and negligent driving of respondent no.1 herein, i.e. the driver of the aforesaid truck.

The truck is stated to have been owned by respondent no.2 and insured by respondent no.3, i.e. the United India Insurance Company Ltd.

Alongwith these three persons, the owner of the Maturi van and the insurer of the said vehicle, were also impleaded as respondents in the claim petition, as they have been in the present appeal also (as respondents no.4 and 5).

2. The three claim petitions having been consolidated, the following issues were framed by the Tribunal on 12.01.1995:-

- “1. Whether the accident took place because of rash and negligent driving of truck no.RNG-2324 bearing driven by Abdul Sharif respondent no.1 on 29.04.1994 in the area of village Sanwala, around 6-00 A.M. when the same

dashed against a Maruti Van No.PB 08E-0426 which was driven by Daljit Singh (deceased)? OPP

2. Whether respondent no.1 was not holding a valid driving licence? OPR
3. To what amount of compensation the petitioners are entitled to and from whom? OPP
4. Relief.”

3. Having appraised the evidence led before it, including the statement of Ram Lubhaya, one of the occupants of the van, the issue of negligence in causing the accident was held against respondents no.1,2 and 3, against which finding no appeal before this Court has been brought to my notice.

Hence, only the issue of the adequacy/inadequacy of the compensation is to be gone into by this Court, in the present appeal.

4. As per the appellants-claimants, Binder Pal Kaur was aged about 35 years and serving in a restaurant in Canada (where the appellants are also stated to be resident of). She was stated to have been earning 960 Canadian dollars per month, which was sought to be proved from the statement of Ram Lubhaya, who appeared as PW5, even as the general attorney of the 1st appellant. (The 2nd appellant-claimant being a minor at that time, had filed the claim petition through her father). He stated that Binder Pal was his sister who had immigrated to Canada in 1978, and was a Canadian national. She was stated to have been employed in M/s A &W Food Services of Canada Ltd.

PW5 also stated that the 2nd claimant (2nd appellant herein) Harpreet Kaur, was his sisters' adopted daughter and that the 1st appellant, i.e.

Jagtar Singh, had sent him documents with regard to the employment and

income of Binder Pal Kaur.

PW6, Iqbal Singh, also testified to being another brother of Binder Pal Kaur, further stating that he had visited his sisters' house in Canada in 1993 and had stayed there for about two months. This witness also corroborated the testimony of PW5 with regard to Binder Pal Kaur serving with the aforementioned company. He further testified that his parents also resided with his sister in Canada and that his sister and brother-in-law had constructed a house there spending 3.50 lacs Canadian dollars, out of which 2 lac Canadian dollars were taken on loan by them.

As per this witness, he was a resident of England and had come to India for his sisters' last rites.

It is to be noticed here that though both, PW5 Ram Lubhaya and PW6 Iqbal Singh, stated that Binder Pal Kaur was their sister, however, the parentage of both these witnesses is different and therefore, with PW6 stating that Binder Pal Kaur was his "real sister", obviously PW5 was either a cousin or he was treating the deceased lady as his sister, since he too testified that she was his sister.

5. Having considered the aforesaid evidence, the learned Tribunal found that a letter from M/s A & W Food Services of Canada Ltd. had been exhibited as Ex.P5, stating therein that Binder Pal Kaur Sandhu was employed with the company and had left for holidays in February 1994 and that she was earning 6 Canadian dollars per hour and worked for 40 hours per week, prior to her going on holiday.

The Tribunal further held that there was also evidence to the effect that some loan had been raised by the deceased alongwith her husband, i.e. the 1st appellant-claimant Jagtar Singh, to purchase a house, and that they

were returning the loan in installments.

It was further held that a joint account was held by the deceased alongwith her husband, in the Canadian Imperial Bank of Commerce, 1294 Guildford Town Centre, Surrey, B.C. V3R7 B7, as per the letter of the Bank, Ex.P4.

The adoption deed by which the 2nd claimant had been adopted by the 1st claimant and the late Binder Pal Kaur, was also seen to have been proved as Ex.P12, showing the adoption to have taken place on 10.08.1988.

Having noticed all the above, the Tribunal awarded a sum of Rs.2,50,000/- as compensation to the appellants-claimants, without any discussion on how that sum was arrived at in any manner whatsoever (stating that it was awarded in the totality of the circumstances).

Hence, the present appeal by the claimants.

6. This appeal was admitted to regular hearing vide an order of a Division Bench of this Court, on 16.07.1996. Thereafter, it was referred to the hon'ble Lok Adalat on various occasion for settlement with the insurer of the vehicle concerned, i.e. with respondent no.3, but no settlement having been reached, it was referred back to the Court. It eventually came up for hearing on 12.05.2016, on which date, though learned counsel had appeared in the pre-lunch session and had been asked to appear after lunch but had thereafter not appeared. Consequently, the matter had simply been adjourned till the next day, i.e. 12.05.2016, but on that date also, none appeared and therefore, it being an appeal of the year 1996, the judgment had been simply been reserved by this Court. Even though the case has remained pending for six months, no application for putting up the case for rehearing, in order to enable the counsel to address arguments, has been filed. Hence, the matter is

being adjudicated upon simply on consideration of the impugned Award as also the grounds of appeal filed by the counsel for the appellant, in terms of the law settled with regard to the parameters of granting compensation to claimants in motor vehicle accident cases.

7. As per the grounds of appeal, it is stated that the deceased was earning 960 Canadian dollars per month, amounting to Rs.28,800/- in Indian currency. She was 35 years old at the time of her death and as such, the compensation deserves to be enhanced.

It has further been stated that the salary certificate (issued by the company with which the deceased had been working), Ex.P5, has not been considered at all by the Tribunal even though the aforesaid amount of 960 Canadian dollars was worked out in the salary certificate, as the deceased was working 40 hours in a week, i.e. 160 hours in a month, earning six dollars per hour. Thus, by multiplying 160 with 6, the sum came to 960 dollars which, according to the appellants, worked out to Rs.28,800/- per month or Rs.3,45,600/- per year.

It has further been contended that if a 1/3rd amount is deducted from the aforesaid annual income towards the personal expenses of the deceased, the loss of annual income to the appellants works out to Rs.2,68,800/-.

It is further stated that even as per the testimony of PW6, who had visited his sister in Canada, it had been proved that she had been earning her salary from the company that had sent a salary certificate and further proof of actual earnings could be seen from the fact that a loan of 200,000/- Canadian dollars had been raised by the deceased and the 1st appellant, which they were regularly returning.

8. Other than the aforesaid contentions, it is further stated in the grounds of appeal that Rs.20,000/- had been spent on account of the transportation charges and funeral expenses of the deceased and therefore, adequate compensation needs to be awarded, alongwith interest @ 18% per annum, running from the date of the filing of the claim petition.

9. Having considered the aforesaid averments made in the grounds of appeal, as regards the issue of assessment of income of the deceased, I find myself unable to agree with the contentions raised, in view of the fact that though it is seen that there is indeed a copy of a salary certificate, Ex.P5, issued by A&W Food Services of Canada Ltd., located in Surrey, BC, Canada, (with the complete address not fully visible in the photocopy) and similarly, a photocopy of a letter written by one Shri Surinder Toor, Personal Banking Representative of the Canadian Imperial Bank of Commerce, Guildford, Surrey, B.C. V3R 7B7, which is dated 15.06.1994, is also on record, stating to the effect that the joint account of the 1st appellant and the deceased had 3,317.37 dollars in it; however, with no witness from either the bank or the company where the deceased worked, having been examined, it would be difficult for this Court to accept the aforesaid documents as having been duly proved.

Obviously, this Court realizes the fact that it would be very difficult and perhaps financially unviable for the claimants to examine witnesses after flying them down from Canada, however, the said two documents not being duly proved by examining any authorised representative of the bank and the company concerned, the figures given therein cannot be applied by this Court to assess compensation under the head of loss of income.

10. Thus, at best, this Court can accept the deceased to have been a semi-skilled worker, even though that is simply on the basis of accepting that she was working with a company in Canada, stated to be earning by perhaps helping in the kitchen, though correctly which may still not necessarily be semi-skilled work.

Yet, accepting it to be such and considering that in the year 1994, the earnings of the deceased can be taken to be Rs.1200/- per month as per the minimum wages payable to such workers in Punjab, in March 1994, hence, the annual earnings of the deceased can be assessed at best to be Rs.14,400/-, from which a 1/3rd amount has to be deducted towards her personal living expenses, which comes to Rs.4800/-.

Thus, the loss of annual income to the appellants-claimants works out to Rs.9600/-.

The deceased having been accepted to be 35 years of age by the Tribunal, as claimed by the appellants, the multiplier to be applied in terms of the ratio of the judgment of the Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** (2009) 6 SCC 121, would be 16. Applying that multiplier to the annual income of Rs.9600/-, the total loss of income comes to Rs.1,53,600/-.

Other than that, the 1st appellant, i.e. the husband of the deceased, would also be entitled to an amount of Rs.1,00,000/- towards loss of consortium and the 2nd appellant-claimant, i.e. the minor daughter of the deceased, shown to have been adopted in the year 1988 as per Ex.P12, would also be entitled to compensation of Rs.1,00,000/- in the opinion of this Court, she having lost the love and affection, care and guidance of her mother in her younger years, though no date of birth of the 2nd appellant is

given in the copy of the adoption deed. However, her minority is not doubted anywhere in the Award.

The appellants would also be entitled to a sum of Rs.20,000/- as claimed by them towards the funeral expenses of the deceased, thereby bringing the total compensation payable to them, as per what has been held hereinabove, to be Rs.3,73,600/-.

Thus, this Court is awarding an amount of compensation of Rs.1,23,600/- over and above the sum of Rs.2,50,000/- awarded by the Tribunal.

The enhanced amount would carry interest @ 6% per annum from the date of the filing of the claim petition till the date of the Award, i.e. 12.02.1996, after which interest @ 4% per annum would be applicable on the aforesaid sum, running from the date of the filing of this appeal, till the date of realization of the amount, it being an 18 year old appeal with no fault of the respondents for it having remained pending for that period in this Court.

The appeal is thus allowed to the aforesaid extent.

November 23, 2016
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No.