

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.464 of 1996

Date of Decision: 29.11.2016

Sattan Devi

....Appellant

Vs.

Roshan Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- None for the appellant.

Mr. Sanjiv Pabbi, Advocate,
for respondent no. 3.

Amol Rattan Singh, J.

This is an appeal filed by the claimants before the learned Motor Accident Claims Tribunal, Faridabad, seeking enhancement of the compensation of Rs.2,88,000/- awarded to them on account of the unfortunate death of Yashwant Singh @ Jaswant Singh (hereinafter to be referred to as Yashwant Singh), husband of the 1st appellant-claimant and father of the other four appellants-claimants.

2. The facts leading up to the filing of the claim petition, are that Yashwant Singh was stated to have been posted as a Head Constable in the Haryana Police at Hodal.

On 16.06.1992, at about 4:00 p.m., he alongwith one Ali Mohd. and Rukumuddin, who were posted there as Constables, were travelling in a 'Gypsy' vehicle bearing registration no.HR-29-4647, going from the Hodal

border to the Badarpur border, escorting a VIP. When the 'Gypsy' reached near village Sikri, a truck bearing registration no. HRP-5401, driven by respondent no.1 herein (Roshan Lal), allegedly in a rash and negligent manner, came from the side of Delhi and hit the 'Gypsy' causing the death of Yashwant Singh on the spot, and injuries to Ali Mohd., Rukumuddin and other occupants of the vehicle.

Thus, the claim petition came to be filed by the present appellant before the learned Tribunal, alongwith which two other claim petitions were also filed, by Ali Mohd. and Rukumuddin, (seeking compensation on account of the injuries sustained by them).

3. In the petition, other than giving the manner of the accident that took place, it was also contended that Yashwant Singh was 44 years of age at the time of his death and was drawing a salary of Rs. 4,000/- per month. Though not seen to be recorded in the impugned Award, a perusal of the claim petition shows that in addition to his salary of Rs. 4,000/- per month, the deceased was also contended to be earning income from agricultural land which he looked after during the holidays.

It was further contended that he had left behind three sons, one daughter and one widow, of whom appellant-claimant no. 2 was a student of class 10+2, appellants-claimants no. 4 and 5 were students of class 9 and 8 respectively and appellant-claimant no. 3 was a married daughter. It was next stated that appellant-claimant no. 2 was also married though unemployed (This is after stating that he was a student of class 10+2).

Thus, it was contended that after Yashwant Singh had

unfortunately died at a young age, there was no one to look after his family.

4. Upon notice issued to the respondents, i.e. the driver, owner and insurer of the aforesaid vehicle, they filed separate written statements, with respondent no.1, i.e. the driver, denying the accident altogether and respondent no.2 also denying it in his written statement, further pleading that he was neither the owner nor in possession of the truck on the date of the occurrence. It was further pleaded that respondent no.1 was not driving the truck during the course of employment of respondent no.2 and that the vehicle was insured with the United India Insurance Company Ltd. (respondent no.3).

In its reply, the insurance company also denied the accident, further pleading that the driver was not holding a valid driving licence on the date of the occurrence and hence, the insurance company in any case was not liable to indemnify the insured.

5. Upon the aforesaid pleadings, the following issues were framed in the claim petition by the learned Tribunal:-

“ 1. Whether Yashwant Singh @ Jaswant Singh son of Gyasi Ram died in a road accident which took place on 16.09.1992 near Sikri village within the jurisdiction of PS Sadar Ballabgarh due to rash and negligent driving on the part of respondent no. 1 driver of truck no. HRP-5401 owned by respondent no. 2 as alleged? OPP

2. Whether respondent no. 1 was not holding a valid driving licence on the date of accident and if so, to what effect? OPR

3. Whether the petitioners are entitled to an award of compensation, if so, for how much amount and against whom? OPP.

4. *Relief.”*

6. The first issue was decided as a common issue in the three claim petitions filed, holding that in terms of the testimonies of the claimants in the other two petitions, Constables Ali Mohd. and Rukumuddin, it was established that the accident of the 'Gypsy' in which they were travelling alongwith Yashwant Singh, took place with the aforesaid truck, which was being driven rashly and negligently by respondent no.1.

Consequently, the issue of negligence in causing the accident was decided in favour of the claimants in all three claim petitions and against the respondents.

7. On the issue of whether respondent no.1 was holding a valid driving licence or not at the time of the accident, it was held by the Tribunal that as per the photocopy of the licence, it was seen to be issued on 15.07.1985, valid till 14.07.1994, and thereafter it had been renewed twice and that “The renewal of this makes Ex.R1 genuine”. Immediately after recording the aforesaid, it is stated in paragraph 8 of the impugned Award, that the accident having taken place on 16.06.1992, there was nothing on record to show that it was an invalid licence and consequently, that issue was held against respondent no.3, the insurance company.

(Though the sentence reproduced *ad-verbatim* hereinabove, from the Award, would otherwise indicate that there was some dispute with regard to the validity of the driving licence originally issued to respondent no.1, with the Tribunal holding it to have been validly issued in view of its renewal thereafter, however, it has not been pointed out to this Court by the counsel

for the respondent-insurance company, that there was any doubt with regard to the validity of the driving licence in any manner).

8. No appeal filed against those two findings of the Tribunal has been brought to the notice of this Court and as such, the question of adequacy of compensation awarded to the present appellants is what is required to be considered.

9. Coming therefore to the compensation awarded by the Tribunal, it was recorded that Yashwant Singh was 45 years old at the time of his death and was drawing a salary of Rs.3000/- per month as per his salary certificate, Ex. PA. deducting expenses of 1/3rd of that income, towards the personal living expenses of the deceased, the monthly dependency of the appellants-claimants was held to be Rs.2000/- per month, or Rs.24,000/- per annum.

Thereafter, keeping in view the duration of the remaining service of the deceased, a multiplier of 12 was applied and the compensation was worked out to Rs.2,88,000/-, equally payable to all the claimants. On the aforesaid sum, they were also held entitled to interest @ 12% per annum, running from the date of the filing of the claim petition, till the realization of the amount.

Consequently, the appellants are in appeal, seeking enhancement of the compensation.

10. It needs to be noticed here that after this appeal was admitted to regular hearing on 19.03.1996, it was referred to the hon'ble Lok Adalat on various occasions to try and arrive at a settlement between the parties but no settlement having been arrived at, it was eventually referred back to this

Court.

It has also been brought to the notice of this Court that an appeal, bearing FAO No. 2358 of 1995, was filed by the aforesaid Ali Mohd. seeking enhancement of the compensation awarded to him by the learned Tribunal vide the impugned Award which was a common Award passed in three claim petitions, i.e. one of the present appellants, one by Ali Mohd. and one by Rukumuddin. That appeal, i.e. FAO No. 2358 of 1995, was disposed of by way of a compromise having been arrived at between the parties therein before the learned Lok Adalat, as recorded in its order dated 18.02.2000.

On the date of actual hearing of the present appeal, i.e. on 13.05.2016, though learned counsel for the respondent-insurance company came and argued the matter, none appeared for the appellants; yet, it being an appeal of the year 1996, arguments of the counsel for the respondents were heard and judgment reserved.

Even in the long period that it has remained pending with this Court, no application has been moved on behalf of the appellants seeking any rehearing, in order to enable their counsel to address arguments. Consequently, it is being adjudicated upon, on the basis of the grounds of appeal filed alongwith the appeal, as well as on the arguments raised by learned counsel for the respondents-insurance company.

Of course, with none having appeared for the appellant, the appeal could have been dismissed in default, but it being a 20 year old case, it was not considered appropriate to do so, with the appellants made to suffer on account of non-appearance of their counsel.

11. Therefore, looking at the grounds of appeal, it has first been stated that a deduction of 1/3rd of the total income of the deceased was “ too harsh”, in view of the fact that his family consisted of six members, i.e the deceased himself, his widow (appellant no.1) and his four children, i.e. appellants No.2 to 5.

It has next been contended that the minimum multiplier that should have been applied to the loss of dependent income, should have been 15, and that interest @ 18% per annum should have been awarded instead of 12%.

Yet further, it has been contended that the income of Rs.1000/- per month that the deceased was earning from his agricultural land, should also have been added to his income.

Next, it has been contended that Rs.2500/- that was spent on the last rites of the deceased, which should also have been awarded by the Tribunal.

It has therefore been prayed that the Award may be modified and adequate compensation awarded.

12. Opposing the aforesaid grounds of appeal, Mr. Sanjiv Pabbi, learned counsel appearing for respondent no.3, (the insurance company), with none having appeared at any stage for the first two respondents, submitted that firstly, as regards agricultural income, no evidence in that regard at all is seen to have been discussed by the learned Tribunal and as such, the question of adding any income from agricultural land, to the salary of the deceased, does not arise.

As regards interest, learned counsel submitted that even 12% was an extremely high rate of interest awarded, as normally 6 to 9% is awarded on the amount of compensation.

Though learned counsel also tried to argue on the issue that the deduction towards personal living expenses should have actually been 1/3rd as awarded by the Tribunal and not 1/4th as stated in the grounds of appeal on behalf of appellants, he obviously could not deny 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, wherein it was held that a deduction of 1/3rd of the income of the deceased should be applied towards personal living expenses where the number of dependent family members are 2 to 3 and 1/4th where they are between 4 to 6.

Upon query by this Court as to why compensation towards loss of consortium should also not be awarded to the first appellant, and for the loss of love and affection, care and guidance of their father to the other appellants, in terms of the ratio of the law settled in that regard, Mr. Pabbi, other than submitting that even the grounds of appeal do not seek such compensation, again could not deny the ratio of the law settled in that regard.

13. Having heard learned counsel for the respondent-insurance company and having considered the grounds of appeal filed by the appellants, the first thing that needs to be determined is as to whether the income of the deceased was correctly assessed by the Tribunal or not.

The salary certificate of the deceased, Ex. PA, showing a salary of Rs. 3,081/- per month, having been duly proved by PW-3 Constable Shri

Chand, who appeared from the accounts branch of the office of the Superintendent Police, Faridabad, I see no reason to discard the said certificate.

I also agree with what has been contended in the grounds of appeal, to the effect that the deceased Yashwant Singh having a wife and four children two of whom are seen to be minors even on the date of the filing of the claim petition and none of them is shown to be married, the deduction to be made from the income of the deceased towards his personal expenses, would be $\frac{1}{4}^{\text{th}}$ and not $\frac{1}{3}^{\text{rd}}$ as was done by the Tribunal.

However, I do agree with learned counsel for the respondent that the income from agriculture as is sought to be included in the income of the deceased, by the appellants in their grounds of appeal, is not addable, in view of the fact that firstly, no evidence in that regard is seen to have been led before the Tribunal and secondly, obviously, the agricultural land, if any, would still be available to the appellants, without any loss even of contribution by the deceased, except perhaps to a minimal extent, he admittedly having been a Head Constable in the police, posted away from home. Thus, it can be reasonably inferred that any agricultural land owned by him, was either being looked after by his family, i.e. the appellants, or was given on lease etc., in both of which situations, there would be no reason to assess any such income as a loss of income to the appellants.

Consequently, deducting that amount of $\frac{1}{4}^{\text{th}}$ from the monthly salary of Rs. 3,081/- the loss of monthly dependent income to the appellants comes to Rs. 2,310/- per month or Rs. 27,720/- per annum.

14. The next question to be determined is as to whether the multiplier of 12 applied by the Tribunal, was correct or not, considering that Yashwant Singh was shown to be 45 years of age, his date of birth being 28.06.1948. As per the service record proved by PW-3, the deceased was 44 years of age. Though the learned Tribunal has shown him to be 45 years of age, his exact age was obviously 44 years and about 03 months at the time of his death on 16.09.1992. However, that little discrepancy in age would make no difference in terms of the multiplier to be applied as per the ratio of Smt. Sarla Verma's case (supra), the multiplier given therein being 14 for the age group of 41 to 45 years and 13 only from 46 years onwards. Though the reasoning of the Tribunal on principal may not have been entirely incorrect to the effect that a multiplier of 12 was to be applied as the deceased had 12 years of service left, however, factually that is obviously incorrect as, firstly, he had almost 13 years of service left, if he were taken to be superannuating at the age of 58 years. Secondly, after his death, he would have continued to draw pension at half of his basic salary, along with dearness allowance thereupon, and though the first appellant would also be entitled to family pension, such family pension would be half of the pension to be drawn by the deceased upon his superannuation.

Consequently, in my opinion, a multiplier of 14, as laid down in Smt.Sarla Verma, is to be applied in the present case also and therefore, on applying the same to the loss of annual dependent income to the appellants.

15. The deceased being in permanent salaried employment with Government, the appellants would also be entitled to loss of future prospects

of an increased income, to the extent of 30% of his proven income again in terms of the ratio of the judgment in Smt.Sarla Vermas' case (supra).

Though the issue of grant of compensation under that head is under consideration of their Lordships, in a larger Bench, however, the reference to the larger Bench is only in the context of whether such loss of income would be payable to the claimants where the deceased was not in permanent salaried employment.

16. Thus, in terms of the ratio of Sarla Vermas' case (supra), on this aspect, if 30% of the loss of annual dependent income of Rs. 27,720/- is added to that sum, the figure arrived at is Rs. 36,036/-, to which a multiplier of 14 would thereafter be applicable, finally coming to a total loss of income to the appellants to be Rs. 5,04,504/-.

17. Though Mr. Pabbi is correct in stating that in the grounds of appeal no claim has been made for loss of consortium to appellant no. 1 and loss of love and affection to appellant nos. 2 to 5, I see no reason to deny the appellants what is payable to them as per law settled in that regard and consequently, though Rs. 1,00,000/- is normally awarded by way of loss of consortium to the spouse of a deceased victim in a motor accident claims case, however, the accident in the present case being of the year 1992, a sum of Rs. 70,000/- is awarded to appellant no. 1 under that head and Rs. 50,000/- each is awarded to appellants no. 4 and 5, who were the minor children of Yashwant Singh at the time of his death, for the loss of love and affection, care and guidance of their father. Rs. 25,000/- each is also awarded to the major children, i.e. appellant nos. 2 and 3 herein, for the loss of love and affection of

their father. Thus, appellants no. 2 to 5 are awarded a total sum of Rs. 1,50,000/- as compensation under that head, to be divided as already stated immediately hereinabove.

18. It is further seen that no amount whatsoever has been awarded to the appellants towards the funeral expenses and last rites of the deceased and again, though as per the settled law Rs. 25,000/- is awarded under that head, however, since the appellants themselves had only claimed to have spent Rs. 2,500/- under that head in the year 1992, even as per their grounds of appeal, that amount is accordingly awarded.

Thus, the compensation now awarded is as follows:-

1.To all appellants for loss of income:	Rs. 5,04,504/-
2.To appellant no. 1 towards loss of consortium:	Rs. 70,000/-
3.To appellants no. 2 to 5 towards the loss of love and affection of their father:	Rs. 1,50,000/-
4.To appellant no. 1 towards funeral expenses of the deceased:	Rs. 2,500/-
Total	Rs. 7,27,004/-

Thus, the total compensation now awarded to the appellants is Rs. 7,27,004 (rounded off to Rs. 7,27,000) which is Rs. 4,39,000/- more than what was awarded by the Tribunal. The appellants would be also entitled to interest @ 6% per annum on the enhanced amount, running from the date of the filing of the claim petition till the date of filing of this appeal, i.e. 18.10.1995, after which they shall be entitled to interest @ 4 % per annum on the enhanced amount of compensation, in view of the fact that the long pendency of this appeal for 21 years is not the fault of the respondents in any

case. Hence, specifically a lower rate of interest is being awarded for that period.

19. Of the enhanced amount of Rs. 4,39,000, appellant no. 1 would be entitled to Rs. 1,80,750/- along with the interest accrued thereupon, appellants no. 4 and 5 would be entitled to Rs. 77,062/- each along with the interest accrued thereupon and appellants no. 2 and 3 would be entitled to Rs. 52,062/- each along with the interest accrued thereupon.

To clarify again, the discrepancy of compensation awarded to appellants no. 2 and 3 on the one hand and appellants no. 4 and 5 on the other hand, is on account of the fact that appellants no. 4 and 5 were minors at the time when their father unfortunately died, whereas appellants no. 2 and 3 had already attained majority. Hence, the difference in compensation awarded for loss of love and affection, *inter se* these two 'categories' of the children of the deceased.

The appeal is accordingly allowed in the aforesaid terms, with costs of Rs. 2,000/- payable to the appellants by the respondents.

(AMOL RATTAN SINGH)
JUDGE

November 29, 2016
dinesh/nitin

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No.