

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

FAO-651-2000(O&M)

Date of decision : 23.04.2016

Smt.Karam Kaur and others

..... Appellants

versus

Rajesh Karan Vishnu and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr.Vishwas Arora, Advocate
for the appellants.

Mr.Rajbir Wasu, Advocate
for respondent No.3.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This appeal has been filed by the legal heirs of deceased Tarsem Singh for enhancement of compensation in respect of his death in a vehicular accident.

Brief facts of the case are that on 13.6.1994 deceased along with his brother was coming from his fields on his cycle after doing agricultural work. His brother Piara Singh was following him on foot. At around 12 noon when the deceased reached bus stand of Nangal Lobana, a Maruti car bearing No. PAH-63 being driven at a very high speed by respondent No.1 and struck against the deceased. Due to the

impact he fell down and the driver ran away along with the car after causing the accident. The deceased was admitted and treated in Sacred Heart Hospital, Maqsoodan upto 6.6.1994 from where he was shifted to DMC Hospital Ludhiana and remained admitted there for quite long time and ultimately died on 22.9.1994.

The deceased was cultivating about 22 kallas of land in all with tractor including 10 kallas of his own and was also getting Rs. 2600/- as monthly pension from the Army. He was 52 years of age at the time of his death. He was having a family of nine persons. The Tribunal took his income to be Rs. 2600/- per month and assessed the monthly expenditure which he used to incur on himself as Rs. 306/- and his monthly contribution towards his family was assessed at Rs. 2294/-. Since he was 52 years of age, the Tribunal applied multiplier of 9 and in this way the compensation worked out to be Rs. 2, 47, 752/-. Besides that Rs. 2000/- were awarded for funeral expenses, Rs. 2500/- towards loss of estate and Rs. 5000/- as loss of consortium, Rs. 5585/- towards medical expenses. Thus, the total compensation came out to be Rs. 2, 62, 837/- with interest at the rate of 12% p.a. Dissatisfied with the award of the Tribunal, the claimants have filed the present appeal for enhancement.

Learned counsel has argued that the case of the appellants was that the deceased was cultivating 22 acres of land. The Tribunal has, however, found that there was no proof of other ownership of any land or of tractor as alleged or of any lease of any land and consequently limited the income of the deceased only to the pension

which he was getting.

In my opinion the Tribunal has erred in completely disregarding the fact that even if the deceased was not proved to have owned any land he was at least proved to have been an agriculturist. Consequently his income as an agriculturist labour had to be taken. As per the relevant notification the agricultural income for the year 1994 was to the tune of Rs. 1600/- per month. Since there were seven dependants excluding the father, deduction of 1/5th has to be made and the dependency would, therefore, be Rs. 3360/- per month (80% of Rs.4200/-) i.e. Rs. 40320/- per annum. The age of he deceased was 52 years and has per **Sarla Verma v. DTC**, (2001) 6 SCC 121 the multiplier would be 11 as against 9 which has been granted by the Tribunal. Compensation thus amounts to Rs. 4,43,520/-. Learned counsel has further argued that only Rs. 5000/- have been given as loss of consortium to the widow-appellant No.1. In my opinion it would be appropriate to grant Rs. 45,000/- more as loss of consortium and Rs. 50,000/- as loss of love and affection. It has come in the award of the Tribunal that at the time of the accident all the claimants were major except appellant No.6. In the circumstances I award Rs. 50,000/- each to appellants No. 2, 3 and 4 (daughters), appellant No.6(minor son) and appellant No.7(mother) for loss of love and affection and an amount of Rs. 25,000/- to the appellant No.5, major son, for loss of love and affection. I award further amount of Rs. 5000/- for funeral expenses. The amount paid would be set off against the enhancement and the enhanced amount would carry interest at the rate of 8% p.a. from the

date of filing of application till the date of payment. Apart from the individual amounts awarded the entire amount would fall to the share of appellant No.1-widow and it is further directed that her share would be put in a fixed deposit for a period of three years and she would be entitled to monthly interest thereon.

With the modification in the award, the appeal is allowed in the above terms.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

April 23, 2016
sunita

(AJAY TEWARI)
JUDGE