IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2712 of 2002
Date of Decision: 02.12.2016

Raj Singh and another **... Appellants**

Vs.

Dharamender and others **... Respondents**

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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Present:- Mr. M. S. Kathuria, Advocate,
for Mr. Rakesh Nehra, Advocate,
for the appellants.

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Amol Rattan Singh, J.

This is an appeal by the claimants in a claim petition filed by them before the learned Motor Accident Claims Tribunal, Rohtak, seeking compensation on account of the unfortunate death of their son, who died in a motor vehicle accident on 27.07.1998.

The Tribunal having awarded them compensation of Rs.3,42,068/-, they now seek enhancement of that compensation in this appeal.

2. The facts are being taken from the impugned Award itself, the record before the Tribunal having been burnt in a fire incident that took place in the record room of this Court in January 2011.

3. As per the appellants-claimants, their son, Jagbir, alongwith Mukesh, Krishan and Devinder, as also other workers of M/s Parle Biscuits Ltd., Bahadurgarh, were going on bicycles to attend their duty with the aforesaid company on 27.07.1998, at about 9:50 am, when a Tata Sumo

vehicle bearing registration no.DL-3CD-5838, came from the side of Rohtak, allegedly driven in a rash and negligent manner by respondent no.1 herein, and hit the cycles of deceased Jagbir as also Mukesh, Krishan and Devinder, due to which they all received injuries, resulting in the unfortunate death of all these 4 persons. Two or three other workers, however, luckily survived their injuries.

The occurrence is stated to have been seen by one Tara Chand son of Mange Ram, also a co-worker in the company, who lodged a report with the police.

4. It was contended that the deceased was 22 years old, earning Rs.1642/- as salary from the aforesaid company and also additionally earning Rs.1000/- per month by dairy farming. It was further contended that he was the sole bread earner of the family and was contributing his income to the family expenses.

The claimants further contended that they had spent Rs.15,000/- on his last rites and as such, being old parents of the deceased, were entitled to a compensation of Rs.5,00,000/-, alongwith the interest @ 18% thereupon.

5. Notice having been isused to the three respondents in the claim petition, (the first respondent being the driver of the vehicle and the second and third respondents both having been shown to be owners of the vehicle aforesaid, i.e. a Tata Sumo bearing registration no.DL-3CD-5838), a written statement was filed by the first respondent denying that he was driving the aforesaid vehicle on the date of the accident. He also denied that the vehicle was owned by respondent no.2 Rajinder Singh and in fact, it was stated that it was owned by respondent no.2a, Ashok Kumar, on the date of the accident, the vehicle having been sold to him and documents for change of ownership

having been submitted to the registration authority.

The income of the deceased as given in the claim petition was also denied, alongwith the other contents of the claim petition, further stating that the said respondent had been falsely implicated in the FIR lodged against him.

6. Respondent no.2, Rajinder Singh, in his written statement, took a preliminary objection with regard to mis-joinder of party, stating that he was not a necessary party as he had already sold the vehicle before the date of the accident, to Ashok Kumar of village Bamnoli, i.e. respondent no.2a, alongwith necessary documents.

7. Respondent no.2a, in his written statement stated that he had nothing to do with the accident and in fact, denied that the accident took place with the said vehicle at all. He, however, admitted to the ownership thereof.

8. The claimants examined the first claimant as PW1 and the aforementioned Tara Chand as PW2, whereas the respondents examined respondent no.1, Dharmender, driver of the vehicle, with respondents no.2 and 2a not having stepped into the witness box.

9. On appraisal of the aforesaid evidence and pleadings, on the issue of negligence, the learned Tribunal came to the conclusion that in fact, Jagbir Singh had died on account of the accident with the vehicle described in the claim petition, driven by respondent no.1 in a negligent manner and consequently, that issue was decided in favour of the claimants.

No appeal filed against that finding has been brought to the notice of this Court.

10. As regards the issue of compensation to be paid by the

respondents to the claimants, it was found that Jagbir Singh was 22 years old, employed with M/s Parle Biscuits Limited as a labourer in their production department, earning a sum of Rs.1642/- per month as a salary, as stated in his salary certificate Ex.PW2/2, proved by PW2.

The aforesaid testimony having gone wholly unrebutted by the respondents, the salary of Rs.1642/- per month was accepted by the Tribunal, further accepting the contention of the claimants that their son was earning Rs.1000/- from a dairy business also, and contributing a total of Rs.2000/- to the household expenses. It was held that deducting 1/3rd towards his personal expenses, he would have contributed Rs.1667/- towards the household. Thus, the loss of annual dependency of the appellants was assessed at Rs.20,004/-, to which a multiplier of 17 was applied, thereby, coming to a loss of dependent income of Rs.3,40,068/- to the appellants. They were also held entitled to Rs.2000/- towards funeral expenses, thereby entitling them to a total compensation of Rs.3,42,068/-.

Interest @ 9% per annum on the aforesaid amount was also awarded, running from the date of the filing of the claim petition till the date of realisation of the compensation amount.

11. In this appeal, it is first to be noticed that though the three respondents as were impleaded before the Tribunal, were impleaded as respondents no.1 to 3 in this appeal also. However, upon a statement being made by learned counsel counsel for the appellants on 30.06.2015, respondent no.3, i.e. Rajinder Singh, was deleted from the array of the respondents.

Respondents no.1 and 2, i.e. the driver and owner of the vehicle, having been shown to be duly served but not having appeared, had already proceeded against *ex parte,* vide an order dated 23.12.2014.

Consequently, before this Court it is only the appellants who have been represented by learned counsel.

12. Mr. M. S. Kathuria, learned counsel for the appellants has submitted that the Tribunal wholly erred in firstly awarding no compensation to the appellants for the loss of love and affection of their son, as also in awarding a wholly inadequate amount of Rs.2000/- towards his funeral expenses and last rites and for not awarding any amount towards the loss of future prospects of an increased income to the appellants.

13. Having considered the aforesaid arguments, as also the impugned Award, there being no appeal by the respondents on the findings of the Tribunal, qua the basis of the compensation to be paid to the appellants, it would otherwise have to be accepted as such. However, this Court is obviously bound to implement the law as it stands and therefore, if loss of future prospects of an increased income are to be included in the compensation, then, with no evidence led with regard to his earning Rs.1000/- per month from dairy farming, this Court would be bound to discard that income. Further, the Tribunal obviously erred in deducting only 1/3rd of the said income towards the personal living expenses of the deceased, he being a bachelor. As per settled law, in such a case, 50% of his income is to be deducted towards the living expenses of the deceased.

As would be seen, this Court is not inclined to disagree with learned counsel as regards the loss of future prospects of an increased income, the deceased proved to have been in salaried employment with a public limited company. Yet, as observed above, even in the absence of any appeal by the respondents, it would be necessary to discard the income of

Rs.1000/- per month, with no evidence whatsoever having been led before the Tribunal to prove such income, other than the testimony of the first appellant herein.

14. Therefore, accepting the salary of the deceased to be Rs.1642/- per month, as per the salary certificate, Ex.PW2/2, duly stated to have been proved by PW2, the deceased having been accepted to be 22 years old, in salaried employment with a public limited company, 50% of that amount would be addable to that income of Rs.1642/- per month, by way of loss of future prospects of an increased income, coming to a figure of Rs.2463/-. Therefore, the annual loss of income would work out to Rs.29,556/-. Deducting 50% thereupon towards the personal expenses of the deceased, the annual loss of dependent income to the appellants (actually only his mother, i.e. appellant no.2), works out to Rs.14,778/- per annum.

Again, as the deceased was 22 years old, 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, a multiplier of 18 is to be applied to that sum to arrive at a total loss of dependent income to the appellants. That calculation works out to Rs.2,66,004/-.

15. Other than the above, though as per the judgment in **Rajesh and others vs. Rajbir Singh and others** (2013)(9) SCC 54, constantly followed thereafter as regards funeral expenses, Rs.25,000/- would be payable to the appellants under that head; however, since the appellants claimed to have spent Rs.15,000/- on the funeral expenses and last rites of the deceased, that amount is therefore awarded.

16. I also agree with learned counsel for the appellants that the parents of the deceased most definitely are entitled to compensation for the

loss of love and affection of their young son, for which Rs.2,00,000/- are awarded. Though, usually, Rs.50,000/- each is awarded to parents by this Court, under that head, however, an increased compensation is being awarded in the present case, in view of the fact that the deceased was only 22 years old and being unmarried, obviously there is no compensation whatsoever, as regards love and affection even of their grand children, to the appellants. Hence, with the aforesaid sum of Rs.2,00,000/- awarded to the appellants on account of love and affection of their son, the total compensation now awarded comes to Rs.4,81,004/-, which is Rs.1,38,936/- more than what was awarded by the Tribunal.

17. This appeal having remained pending before this Court for 14 years, a higher rate of interest is not considered appropriate to be awarded to the appellants, the delay in disposal of the appeal obviously not being the fault of the respondents.

Consequently, interest @ 6% per annum is awarded on the enhanced amount of compensation of Rs.1,38,936/-, running from the date of institution of the claim petition, i.e. 01.08.1999, till the date of filing of this appeal (20.03.2002), after which interest @ 4% per annum would be paid by the respondents to the appellants-claimants, on the enhanced compensation, till the date of realization thereof by the appellants.

18. The appeal is thus allowed to the aforesaid extent, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

December 2, 2016
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No.