

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

FAO No. 1655 of 2001(O&M)

Date of Decision: April 12 , 2016.

Santosh and others

..... APPELLANT (s)

Versus

Ishwar Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Shilak Ram Hooda, Advocate
for the appellants.

Mr. Kuldeep Joshi, Advocate for
Mr. Harsh Aggarwal, Advocate
for respondent No.3.

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

LISA GILL, J.

This appeal has been preferred by the widow and minor children of Jagjeet Singh who passed away on account of the injuries suffered in a motor vehicular accident, which took place on 31.03.1999. Appellants pray for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as, the 'Tribunal') vide impugned award dated 25.07.2000.

As per the facts narrated in the claim petition, deceased –

Jagjeet Singh, an Advocate, was proceeding to his residence situated in Sector 1, HUDA, Rohtak at about 6.00 p.m. on a scooter bearing registration No. HR-12B-5345. When he reached near Tilak Nagar approach road on Delhi bypass road, a truck bearing registration No. HYR-3530 approached from Delhi side being driven by respondent No.1 – Ishwar Singh in a rash and negligent manner at a very fast speed. The truck was being driven on wrong side of the road. It hit against the scooter being driven by Jagjeet Singh and dragged it along for several yards. Resultantly, Jagjeet Singh sustained grievous injuries and the scooter in question was also badly damaged. Jagjeet Singh was taken to the PGIMS, Rohtak where he succumbed to his injuries on 05.04.1999. FIR No.122 dated 31.03.1999 under Sections 279/337/427 IPC was registered at Police Station Civil Lines, Rohtak against the respondent – driver.

The present appellants preferred a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of the death of Jagjeet Singh, stated to be a leading lawyer practising at Rohtak for the last many years. He was averred to be drawing income from agricultural land as well. It was further claimed that a substantial amount was spent on his medical treatment from 31.03.1999 to 05.04.1999, when he ultimately succumbed to injuries. Another claim petition was filed by Joginder Singh claiming compensation on account of the damage sustained by the scooter involved in the accident, allegedly owned by him.

The claim was resisted by the respondents while pleading that the truck in question was driven in a moderate speed with all due care and caution and the accident took place due to the fault of the deceased himself, who was not careful while driving the scooter.

Learned Tribunal on the basis of the pleadings of the parties, framed the following issues:-

- 1. Whether the present accident is the outcome of rash and negligent driving of respondent No.1, Ishwar Singh while driving vehicle bearing No.HYR 3530 on 31.3.1999, at about 6.00 P.M. in which Jagjeet Singh died and scooter bearing No. HR-12B-5346 owned by petitioner Joginder Singh was damaged?OPP
- 2. If issue No.1 is proved in affirmative, to what amount and from whom the petitioners are entitled to recover? OPP
- 3. Whether respondent No.1, was holding valid driving license on the date of accident? OPR
- 4. Relief

On consideration of the pleadings, evidence, entire facts and circumstances of the case, the learned Tribunal awarded a sum of ₹3,84,000/- as compensation to the appellants, apportioned as under:-

1. Smt.Santosh widow petitioner No.1	Rs.1,00,000/-
2. Sudhir minor son, petitioner No.2	Rs.80,000/-
3. Kulvir minor son, petitioner No.3	Rs.80,000/-
4. Yudhvir minor, son petitioner No.4 and	Rs.80,000/-
5. Mother of deceased Jagjit Singh, who has not been impleaded as a party to the petition.	Rs.44,000/-

	Total Rs.3,84,000

Age of the deceased was accepted by the learned Tribunal to be 40 years at the time of the accident. Income of deceased – Jagjeet Singh was assessed as ₹3,000/- per month in the absence of any documentary proof of his income as an advocate or from other sources. Deduction of 1/3rd was applied on account of personal expenses of the deceased hence, the monthly dependency of the deceased was assessed as ₹2,000/-. Multiplier of 16 was applied and loss of dependency was worked out as ₹3,84,000/-. No other amount was awarded by the learned Tribunal. No amount was awarded to the claimant – Joginder Singh on account of the damage caused to his scooter.

Learned counsel for the appellants submits that the learned Tribunal has erred in awarding such a meagre compensation. The appellants are entitled to compensation on account of loss of consortium, loss of love and affection. No amount has been awarded by the learned Tribunal for funeral expenses. Furthermore, deduction of 1/3rd should not have been applied keeping in view the number of dependants i.e., four in this case. It is further contended that self-employed persons are entitled to loss of future prospects also. It is fairly conceded by Mr. Hooda, learned counsel for the appellants that there is no documentary evidence on record to prove the income of the deceased to be more than ₹3,000/- per month as assessed by the learned Tribunal. He, thus, prays for enhancement of the compensation awarded to the claimants as above while accepting the income of the deceased to be ₹3,000/- per month.

Learned counsel for respondent No.3, on the other hand prays

for dismissal of this appeal on the ground that no case for any further enhancement of compensation is made out.

I have heard learned counsel for the parties and have gone through the file. It is not disputed that the finding of the learned Tribunal on Issue No.1 has attained finality as no appeal has been preferred by the respondents challenging the same. Thus, it is proved that deceased – Jagjeet Singh sustained injuries in the motor vehicular accident which occurred on 31.03.1999 due to rash and negligent driving of the offending vehicle by respondent No.1 – Ishwar Singh. Jagjeet Singh succumbed to his injuries on 05.04.1999 as is evident from Post Mortem Report, Ex.P3. As has been fairly stated by learned counsel for the appellants there is no evidence on record to prove income of the deceased to be more than ₹3,000/- per month. Even the license issued by the Bar Council of Punjab and Haryana to Jagjeet Singh was not produced. Neither the income tax return of the deceased or any other document is on record reflecting or proving the deceased to be earning an enhanced amount of income. Therefore, the income assessed by the learned Tribunal as ₹3,000/- per month is accepted to be correct. Keeping in view the age of deceased at the time of accident i.e., 40 years, multiplier of 15 is to be applied as has been held by **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, 2009(3) RCR (Civil) 77. However, deduction of 1/4th instead of 1/3rd is to be applied keeping in view the number of dependants i.e., widow and three children.

Keeping in view the dictum of Hon'ble Supreme Court in

Rajesh and others v. Rajbir Singh and others, 2013(3) RCR(Civil)170

(SC), claimants are entitled to an addition in income on account of loss of future prospects. Though it is contended by learned counsel for the respondents that such benefit has to be denied to the claimants in view of the pendency of a reference before the Hon'ble Supreme Court in SLP CC No.8058 of 2014 (National Insurance Company Ltd. v. Pushpa and others) vide order dated 02.07.2014, it is not disputed that operation of decision in Rajesh v. Rajbir's case (supra) has not been stayed. Hon'ble Supreme Court in a decision subsequent to the reference in Pushpa's case (supra) has awarded addition on account of loss of future prospects in respect to private employed persons in **Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347**. Keeping in view the judgments of Hon'ble Supreme Court in Rajesh v. Rajbir's case (supra) and Munna Lal Jain's case (supra), an addition of 30% has to be effected on account of loss of future prospects as the deceased was 40 years of age at the time of the accident.

Accordingly, applying a deduction of 1/4th on account of personal expenses, dependency of the claimants is worked out as ₹2,250/- (3000-750) per month. After affording an addition of 30% (i.e., ₹675) on account of loss of future prospects, dependancy comes to ₹2,925/- per month (₹2,250+₹675) i.e., ₹35,100/- per annum (₹2,925x12). After applying multiplier of 15, loss of dependancy works out to be ₹5,26,500/- (₹35,100 x 15).

Appellant No.1 – widow is entitled to a sum of ₹1,00,000/- on

account of loss of consortium and three minor children are entitled to ₹50,000/- each on account of loss of love and affection. A sum of ₹25,000/- is awarded towards funeral expenses.

Appellants-claimants are, thus, entitled to enhanced compensation as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of Dependency (₹2,925x12x15)	₹5,26,500/-
2.	Loss of consortium to the wife	₹1,00,000/-
3.	Loss of love and affection ₹50,000/- each to three minor children	₹1,50,000/-
4.	Funeral expenses	₹25,000/-
	Grand Total	₹8,01,500/-

The compensation already awarded to the claimants by the Tribunal shall obviously be deducted from the amount as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 6.5% per annum from the date of filing of petition till realization.

With the above modification in the impugned award dated 25.07.2000 passed by Motor Accident Claims Tribunal, Rohtak, this appeal is disposed of.

April 12 , 2016.
'om'

(LISA GILL)
JUDGE