

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

FAO No.911 of 1999

Date of decision : September 27, 2016.

Kulwant Kaur and others

.... Appellants

Vs.

Labh Singh and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Mr. Vivek Sharma Vashisht, Advocate,
for the appellants.

Mr. Sukhdarshan Singh, Advocate,
for respondent No.3.

AMOL RATTAN SINGH, J.

This is an appeal by four of the five claimants who had filed a claim petition before the learned Motor Accident Claims Tribunal, Ludhiana, on account of the unfortunate death of Harpal Singh, in a motor vehicle accident on 22.06.1996 at about 8:30 pm, in the area of village Ayali Kalan, District Ludhiana.

The present appellants are the widow and three (then minor) children of the deceased, with the 5th claimant before the Tribunal having been the mother of the deceased, who was impleaded as proforma respondent No.4 in the present appeal but is shown to have died during the pendency of the appeal, without any service having been effected upon her.

from the Award of the learned Tribunal, (the original records having been burnt in a fire incident of January 2011), are that Harpal Singh is stated to have been going on a scooter from Avtar Nagar to village Ayali Kalan on 22.06.1996, and when he reached a place between the G.T.Road and the aforesaid village, at about 8:30 pm, a Maruti car bearing registration No.PB-105-0766, driven by respondent No.1 herein, in a rash and negligent manner, came from the opposite side and struck against his scooter. He is stated to have fallen down on the left side of the road and received head injuries.

He was admitted to the Dayanand Medical College and Hospital, Ludhiana, by Iqbal Singh and Sukhpal Singh, where he unfortunately died on 27.06.1996, i.e. about five days after the accident. An FIR is also stated to have been lodged on the date of his death, at Police Station Sadar, Ludhiana.

The occurrence is stated to have been witnesses by the aforesaid Iqbal Singh and one Rajinder Singh, who were stated to have been coming behind Harpal Singh on their scooter.

It was further stated in the claim petition, that the deceased was employed as a Clerk in the Government High School, Barewal, Tehsil and District Ludhiana and was drawing a monthly salary of Rs.4320/-.

He was stated to have been 37 years old when he died.

3. Upon notice issued to the respondents, respondent no.1, i.e. Labh Singh, driver of the Maruti car, admitted the accident but stated that it took place due to the fault of Harpal Singh, despite he (Labh Singh) trying his best to save him.

Respondent No.2, i.e. the owner of the Maruti car, filed a written statement denying complete knowledge of the accident and the contents of the claim petition.

The insurance company, i.e. respondent No.3, also filed a separate written statement, denying the contents of the claim petition and further stating that the Maruti car did not have a valid registration certificate at the time of the accident and that the company was not liable to pay any compensation, because respondent No.1 also did not have a valid driving licence.

Other preliminary objections with regard to non-joinder etc. were also taken.

4. The usual issues of the negligence in driving, the amount of compensation payable if any, and non-possession of a valid driving licence by respondent No.1, having been framed by the learned Tribunal, the first issue of negligence was held against respondent No.1, on the basis of the testimonies of the eye witness, Iqbal Singh, AW4 and one Bakhtawar Singh, AW5, who stated that respondent no.1 had admitted to him that the accident had occurred and that he did not know what might have happened to the scooterist.

Respondent No.1 not having refuted the aforesaid version, though he had filed a written statement, the issue of negligence was decided against him.

That finding is not under challenge in any appeal filed by the respondents herein. Consequently, only the issue of adequacy/inadequacy of compensation is to be seen in the present appeal.

5. The first appellant-claimant, Kulwant Kaur, widow of the deceased, stepped into the witness box in support of her claim petition, reiterating the contents thereof and also examined one Ram Niwas as AW2, who produced a salary certificate from the Government High School in which

the deceased was working, showing that he had been drawing a monthly salary of Rs.4320/- per month in all and after deduction, his 'carry home salary' was Rs.3895/- per month.

The aforesaid evidence not having been refuted, the Tribunal applied a deduction of 1/3rd on the aforesaid 'carry home salary' and concluded that the loss of dependent income to the claimants came to Rs.2597/- per month or Rs.31,164/- per annum.

To the aforesaid sum, a multiplier of 11 was applied by the Tribunal, thereby coming to a loss of dependent income of Rs.3,42,804/- to the claimants.

Rs.7000/- was added towards loss of consortium to the 1st claimant and the total compensation was rounded off to Rs.3,50,000/-.

6. The issue of lack of registration certificate and valid driving licence not having been proved by the insurance company, the respondents before the Tribunal were held jointly and severally liable to pay the compensation, alongwith interest @ 12% per annum, running from the date of the filing of the petition till the date of the Award.

Of the compensation amount, the widow of the deceased, i.e. present appellant No.1, was awarded Rs.1,50,000/-, with the other four claimants, i.e. the two minor daughters, minor son and mother of the deceased, being awarded Rs.50,000/- each.

7. Before this Court, Mr. Vivek Sharma, learned counsel for the appellants, submitted that the Tribunal wholly erred, firstly in taking the income of the deceased to be only his 'carry home salary', when actually the entire salary, less the income tax payable thereon, needed to have been taken as his monthly income.

Next, learned counsel submitted that the deceased admittedly having five dependents, i.e. his widow, three minor children and his mother, a 1/5th deduction was to be made from his income and not 1/3rd as has been done by the Tribunal.

Mr. Sharma further submitted that the deceased admittedly having been in permanent salaried appointment, being a Clerk in a Government School, the appellants-claimants were entitled to compensation for the loss of an increased income in the future, as per the ratio of the judgment of Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121.

He next submitted that the multiplier of 11 was also incorrect, inasmuch as a multiplier of 15 has been held to be applicable, where the deceased was between the age of 35 to 40 years.

Yet further, learned counsel submitted that as is well settled now, the compensation to be awarded for loss of consortium is Rs.1,00,000/-, to the widow, with the minor children of the deceased also entitled to Rs.1,00,000/- each for the loss of love and affection, care and guidance of their father.

Similarly, he contended that the mother of the deceased would also have been entitled to Rs.50,000/- for the loss of love and affection of her son.

Other than that, he submitted that expenses on the treatment of the deceased, for a period of 5 days before he died, and on account of his funeral expenses, were to be awarded, which the Tribunal has not done.

8. Mr. Sukhdarshan Singh, learned counsel for the respondent-insurance company (the other two respondents not seen to have appeared at

any time during the pendency of the appeal), submitted that the accident being of the year 1996, the compensation awarded towards loss of consortium, i.e. Rs.7000/-, was sufficient as per the law prevalent at that time and further, that the amount awarded for loss of income to the claimants was also correctly calculated by the Tribunal.

He, consequently, prayed for dismissal of the appeal.

9. Having heard learned counsel for the parties and having perused the impugned Award of the learned Tribunal, I agree with the learned counsel for the appellants that firstly, it was not the 'carry home salary's but the gross salary of the deceased, less the income tax payable thereupon, that was to be taken to be the net income of the deceased. Similarly, he having five dependents on him, a deduction of $\frac{1}{4}^{\text{th}}$, and not $\frac{1}{3}^{\text{rd}}$ of his income, was to be factored in towards his personal living expenses, in terms of the judgment of the hon'ble Supreme Court in *Sarla Verma's* case (supra). Also, as per the ratio of the aforesaid judgment, a multiplier of 15 was to be applied and not 11 as has been done by the Tribunal, the deceased admittedly being 37 years of age.

The contention of learned counsel for the appellants is further correct, that the deceased admittedly having been a permanent Government employee, who would have in the normal course continued to serve till the date of his superannuation 21 years later, loss of future prospects of an increased income were also to be factored in by the Tribunal.

10. Yet further, as per the ratio of the law so far settled, the widow of the deceased, i.e. present appellant no.1, would be entitled to Rs.1,00,000/- by way of loss of consortium and Rs.25,000/- towards the funeral expenses of the deceased.

Similarly, in the opinion of this Court, the minor children of the deceased having been shown to be only between 4 to 8 years of age, at the time of the death of their father, they obviously lost his love and affection, care and guidance forever at such a young age, and accordingly would be entitled to Rs.1,00,000/- each as compensation for the aforesaid, even though even that amount is actually far less than would compensate for such a loss.

However, since that is the amount which has conventionally been awarded by this Court to minor children of the deceased, if they do not exceed 3 in number, the same is accordingly to be awarded to appellants No.2 to 4 herein.

Though undoubtedly the mother of the deceased would also be entitled to Rs.50,000/- as minimum compensation for the loss of her son, however, she having died, that amount is not being awarded to the appellants, the loss of love and affection of a deceased being specific to each individual.

The judgment in **Vimal Kanwar and others vs. Kishore Dan and others (2013)(7) SCC 476** can be referred to, wherein the accident in question in that *lis* also, took place on 14.09.1996. Yet, the widow of the deceased was awarded Rs.1,00,000/- towards loss of consortium, the daughter of the deceased was awarded Rs.2,00,000/- for loss of love and affection and the mother of the deceased was awarded Rs.1,00,000/-, with another Rs.25,000/- awarded towards the funeral expenses of the deceased.

No law to the contrary, thereafter, has been brought to the knowledge of this Court.

11. Accordingly, this appeal is allowed and the following amounts of compensation are now awarded to the appellants:-

1) Towards loss of income:-

i)	Proved monthly salary of the deceased	: Rs.4320x12 = Rs.51,840/-
ii)	Standard deduction applicable on salaried income, for the Assessment Year 1997-98	: Rs.15,000/-
iii)	Net taxable income of the deceased	: Rs.36,840/-
iv)	Income tax applicable upto salary of Rs.40,000/- per annum the Assessment Year 1997-98	: NIL
v)	Net annual salary of the deceased	: Rs.51,840/-
vi)	Net annual salary, less 1/4 th for the personal living expenses of the deceased	: Rs.38,880/-
vii)	50% by way of loss of future prospects of increased income, to the claimants	: Rs.19,440/-
viii)	After a 1/4 th deduction towards personal expenses of the deceased	: Rs.14,580/-
ix)	Total loss of income to the appellants-claimants per annum	: Rs.53,460/-
x)	Total loss of income after applying a multiplier of 15	: Rs.8,01,900/-
2)	Towards loss of consortium	: Rs.1,00,000/-
3)	Towards loss of love and affection, care and guidance of their father, appellants No.2 to 4 @ Rs.1,00,000/- each	: Rs.3,00,000/-
4)	Towards last rites and funeral expenses	: Rs.25,000/-
Total		: Rs.11,26,900/- rounded off of Rs.11,27,000/-

12. Thus, the compensation awarded by the Tribunal of Rs.3,50,000/-, is enhanced by Rs.7,77,000/-.

The enhanced amount of compensation shall carry interest @ 6% per annum, running from the date of the filing of the claim petition, till the date of actual realisation thereof.

Of the aforesaid sum, appellant no.1 shall be paid Rs.3,27,000/- alongwith the interest thereupon.

The remaining amount of Rs.4,50,000/- shall be apportioned equally between appellants No.2 to 4, with each of them entitled to receive an amount of Rs.1,50,000/- each, alongwith the interest accrued thereupon.

13. As regards the issue of payment of any expenses incurred upon

the treatment of the deceased, for the five days that he was admitted in the hospital, since no evidence whatsoever was led before the Tribunal in that regard, possibly because the amount may have been reimbursed to appellant no.1, the deceased being a Government servant, no compensation under that head is being awarded.

The appeal, is accordingly, allowed to the extent above, with no order as to costs.

September 27, 2016
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(AMOL RATTAN SINGH)
JUDGE