IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 1956 of 2001(O&M)
Date of Decision: 13.01.2016

Sudesh Kumari and others ....Appellants

versus

State of Haryana and others .... Respondents

2. FAO No. 1191 of 2001(O&M)
Date of Decision: 13.01.2016

Sushila and others ....Appellants

versus

State of Haryana and others .... Respondents

CORAM: Hon'ble Mr. Justice Ajay Tewari

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Present: Mr.Kulvir Narwal, Advocate for the appellant/s.

Mr.Pawan Kumar Jhangra,Addl.AG, Haryana.

Mr.D.P.Gupta, Advocate for respondent No.4-insurance company.

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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?

<u>Ajay Tewari, J. (Oral):</u>

This order shall dispose of the above mentioned two appeals filed for enhancement of compensation. Since they both have arisen out of a common award, they are being disposed of by this common order. The facts are being taken from FAO No. 1956 of 2001.

The brief facts are that on 25.01.2000 deceased Birender Singh alias Virender Singh along with his friends namely Ram Niwas and Subhash etc. was going from Rohtak to Gohana in his Maruti car bearing registration No. DBC-1890 which was being driven on the correct left hand side of the road and when they reached in the area of village Mahra, District Sonepat at around 1.00 p.m. a bus of the Haryana Roadways bearing No. HR-46/0265 being driven by Dharam Raj-respondent No.2 came from Gohana side being driven in a rash and negligent manner and at a high speed and struck against the car by coming on the wrong side of the road. As a result of the impact Birender Singh alias Virender Singh, Ram Niwas, Subhash, Sushil Kumar and Pardeep Kuamr received injuries and they were removed from the site of accident and were being taken to PGIMS Rohtak but all of them died at the spot. The accident was alleged to have been caused due to the rash and negligent driving of respondent No.2.

The deceased was working as a Clerk-cum-Cashier in a bank and was drawing a monthly salary of Rs.5391/-. The Tribunal, while computing compensation to be payable to the legal heirs of deceased Birender alias Virender, took into account his carry home salary as Rs. 4840/-. Out of that an amount of Rs. 1000/- was cut on account of travelling expense as he was residing at Rohtak and used to commute from Rohtak to Delhi, his place of posting. In this way his contribution towards his family was taken as Rs. 3840/- to which a further cut of 1/3rd was applied on account of his personal expenses and monthly dependency of the appellants was assessed at Rs. 2600/-. Since deceased was 26 years of age, multiplier of 16 was applied and the total amount of compensation was worked out to (Rs. 2600 x 12 x 16) be R. 4,99,200/- which was rounded off to Rs. 5,00,000/- out of which Rs. 2,50,000/- were ordered to be given to his widow, Rs. 1,75,000/- to his minor son i.e. appellant No.2 and Rs.75,000/- to his mother i.e. appellant No.3. The compensation was ordered to be payable along with interest at the rate of 9% p.a. from the date of filing of the claim petition till retaliation. Being dissatisfied with the compensation, the claimants have filed the present appeal.

FAO No. 1191 of 2001

The deceased namely Ram Niwas was employed as UDC in Krishi Bhawan, Delhi and was getting a salary of Rs. 7239/- per month. Out of that an amount of Rs. 1485/- was deducted on account of HRA,CCA and TA. Out of that an amount of Rs. 1000/- was cut on account of travelling expense as he was residing at Rohtak and used to commute from Rohtak to Delhi, his place of posting. In this way his contribution towards his family was taken as Rs. 4754/- to which a cut of 1/3rd was applied on account of his personal expenses and monthly dependency of the appellants was assessed at Rs. 3200/-. Since deceased was 28 years of age, multiplier of 16 was applied and the total amount of compensation was worked out to (Rs. 3200 x 12 x 16) be Rs. 6,14,400/- out of which Rs. 2,50,000/- were ordered to be given to his widow, Rs. 1,50,000/- to his minor son, Rs. 1,50,000/- to his minor daughter and Rs.64,400/- to his mother i.e. appellant No.4. The compensation was ordered to be payable along with interest at the rate of 9% p.a. from the date of filing of the claim petition till retaliation. Being dissatisfied with the compensation, the claimants have filed the present appeal.

Discussion in FAO No. 1956 of 2001

In this case the first argument of learned counsel for the claimants is that the Tribunal has erred in considering carry home salary as the income and thereafter making a deduction of Rs. 1000/- towards travelling expenses and had taken net salary as Rs. 3840/- and has thereafter made deduction of $1/3^{rd}$. As per him the income had to be taken to be his total salary and considering that there were three dependents , a cut of only 25% should have been levied.

I find force in this argument and consequently hold that the income should have been taken to be the total salary and on that a cut of 25% should have been imposed.

Learned counsel for the appellants has argued that the Tribunal has not awarded anything towards future prospects and nothing has been awarded for loss of love and affection, loss of consortium, transportation and funeral charges etc.

As regards future prospects learned counsel for the appellants has relied upon **Rajesh and others v. Rajbir Singh and others** reported as 2013(9) SCC 54. On the other hand learned counsel for the insurance company has relied upon **Reshma Kumari and others v. Madan Mohan and another** reported as 2013 AIR SC(Civil) 1731. This point has been discussed in detail by this Court in FAO No. 2990 of 2011, Manjit Kaur and others v. Ramesh Kumar and others decided on 08.01.2014. The deceased in the present case was 26 years of age. Therefore, adopting the same analogy as in FAO No. 2990 of 2011(supra), I grant an increase of 50% towards future prospects.

With regard to compensation under the conventional heads, learned counsel for the appellants has again relied upon Rajesh and others(supra) and **Vimal Kanwar and others v. Kishore Dan and others** reported as 2013(3) Recent Apex Judgments 446

As regards compensation regarding loss of love and affection, counsel for the respondent-Insurance Company has argued that the Hon'ble

Supreme Court in Rajesh and others' case (supra) granted a total amount of Rs.1 lac towards loss of consortium to the widow and Rs. 1 lac to three minor children for loss of care and guidance.

Counsel for the appellants, on the other hand, has contended that in Vimal Kanwar and others' case (supra), the Hon'ble Supreme Court awarded a sum of Rs.1 lac to the widow and a sum of Rs. 2 lac to the minor girl on account of loss of love and affection, and another sum of Rs.1 lac towards loss of consortium to the widow.

Consequently I grant an amount of Rs. 1,00,000/- to appellant Sudesh Kumari (widow) for loss of consortium and Rs. 1,00,000/- for loss of love and affection. Another amount of Rs.1,00,000/- to appellant No.2 and Rs. 50,000/- to the mother of the deceased on account of loss of love and affection. Further an amount of Rs. 25,000/- is awarded for funeral expenses and transportation etc.

The apportionment and the management of the money would be as per the award of the Tribunal.

This appeal is allowed to the above extent.

Discussion in FAO No. 1191 of 2001

In this case also the first argument of learned counsel for the claimants is that the Tribunal has erred in considering carry home salary as the income and thereafter making a deduction of Rs. 1000/- towards travelling expenses and had taken net salary as Rs. 4754/- and has thereafter made deduction of 1/3rd . As per him the income had to be taken to be his total salary and considering that there were four dependents , a cut of only 25% should have been levied.

I find force in this argument and consequently hold that the income should have been taken to be the total salary and on that a cut of

25% should have been imposed.

Learned counsel for the appellants has argued that the Tribunal has not awarded anything towards future prospects and nothing has been awarded for loss of love and affection, loss of consortium, transportation and funeral charges etc.

As regards future prospects learned counsel for the appellants has relied upon **Rajesh and others v. Rajbir Singh and others** reported as 2013(9) SCC 54. On the other hand learned counsel for the insurance company has relied upon **Reshma Kumari and others v. Madan Mohan and another** reported as 2013 AIR SC(Civil) 1731. This point has been discussed in detail by this Court in FAO No. 2990 of 2011, Manjit Kaur and others v. Ramesh Kumar and others decided on 08.01.2014. The deceased in the present case was 28 years of age. Therefore, adopting the same analogy as in FAO No. 2990 of 2011(supra), I grant an increase of 50% towards future prospects.

With regard to compensation under the conventional heads, learned counsel for the appellants has again relied upon Rajesh and others(supra) and **Vimal Kanwar and others v. Kishore Dan and others** reported as 2013(3) Recent Apex Judgments 446

As regards compensation regarding loss of love and affection, counsel for the respondent-Insurance Company has argued that the Hon'ble Supreme Court in Rajesh and others' case (supra) granted a total amount of Rs.1 lac towards loss of consortium to the widow and Rs. 1 lac to three minor children for loss of care and guidance.

Counsel for the appellants, on the other hand, has contended that in Vimal Kanwar and others' case (supra), the Hon'ble Supreme Court awarded a sum of Rs.1 lac to the widow and a sum of Rs. 2 lac to the minor girl on account of loss of love and affection, and another sum of Rs.1 lac towards loss of consortium to the widow.

Consequently I grant an amount of Rs. 1,00,000/- to claimant Sushila (widow) for loss of consortium and Rs. 1,00,000/- for loss of love and affection. Another amount of Rs.1,00,000/- each to appellants No.2 and 3 being his son and daughter and Rs. 50,000/- to the mother of the deceased i.e. appellant No.4 on account of loss of love and affection. Further an amount of Rs. 25,000/- is awarded for funeral expenses and transportation etc.

The apportionment and the management of the money would also be as per the award of the Tribunal.

With the modification in the award, this appeal is allowed to the above extent.

(AJAY TEWARI)
JUDGE

January 13, 2016
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