

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 25 of 2001 (O&M)
Date of Decision : 22.12.2016

Vinay Sohal and othersAppellants

Versus

Gurvinder Singh and othersRespondents

2. FAO No. 27 of 2001 (O&M)

Vinay SohalAppellant

Versus

Gurvinder Singh and othersRespondents

3. FAO No. 28 of 2001 (O&M)

Sivek SohalAppellant

Versus

Gurvinder Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sagar Aggarwal, Advocate
for Mr. Ashit Malik, Advocate
for the appellants.

Mr. Ashwani Verma, Advocate
for respondent no. 2.

Mr. Sanjiv Pabbi, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

FAO No. 25 of 2001

This is appeal filed by claimant-Vinay Sohal and others seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Karnal (later referred to as 'the Tribunal') for death of Subhash

Sohal (later referred to as 'the deceased') in motor vehicle accident on 04.07.1997 with TATA Sumo bearing registration no. PB-08-BT-8394 (later referred to as 'the offending vehicle').

2. The Tribunal allowed compensation of ₹10,37,245/- to claimants, which was computed as follows:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Subhash Sohal
(ii)	Age of the deceased at the time of accident	50 years
(iii)	Income of the deceased	₹118298
(iv)	1/3 rd of (iv) above deducted towards personal expenses	₹118298-₹39433) =₹78865 per annum (wrongly taken as ₹77865)
(v)	Amount of dependency after applying multiplier of 13	(₹77865x13)= ₹1012245
(vi)	Compensation towards transportation and last rites	₹15000
(vii)	Agricultural income	₹20000
<i>Total</i>		₹1047245 (wrongly mentioned as ₹1037245)

FAO No. 27 of 2001

3. This is appeal by claimant-Vinay Sohal seeking enhancement of compensation awarded by the Tribunal for death of her son, namely, Amit Sohal (later referred to as 'the deceased') in motor vehicle accident with the offending vehicle. The Tribunal awarded a lump sum amount of ₹1,50,000/- for death of Amit Sohal in the motor vehicle accident.

FAO No. 28 of 2001

4. This is appeal by claimant-Sivek Sohal, who was aged 16 years at the time of accident, for the injuries suffered by him in motor

vehicle accident with the offending vehicle. The Tribunal awarded compensation of ₹30,000/- to claimant, which was computed as follows:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Expenses of medicines and future treatment	₹20000
(ii)	Pain and suffering, special diet and transportation etc.	₹10000
<i>Total</i>		₹30000

5. The above three appeals have been taken up together for disposal as these relate to deaths/injuries in same accident with the offending vehicle.

6. Case of claimants, in brief, is that on 04.07.1997, deceased Subhash Sohal alongwith his wife Vinay Sohal and two sons, namely, Amit Sohal and Sivek Sohal was going from Chandigarh to Delhi in Maruti car bearing registration no. DL-8-CP-8737 for catching flight for Philippines. The car was being driven by Subhash Sohal at a moderate speed on left side of the road. When he reached near Police Station Gharaunda, the offending vehicle, which was being driven by Surjeet Singh in a rash and negligent manner, hit the Maruti car as a result of which Subhash Sohal and Amit Sohal died at the spot while Vinay Sohal and Sivek Sohal sustained injuries. The matter was reported to the police by Sivek Sohal on whose statement FIR for offence under Sections 279/337/304-A IPC was registered against driver of the offending vehicle.

7. The deceased Subhash Sohal, aged 45 years, was a successful businessman having business in India as well as Philippines. He was running business of raw rubber under the name and style of M/s Sohal and

Associates at Jalandhar besides the business of Financer at Pasay City, Philippines. He was also owning about 60 acres of land and used to earn ₹2 lacs per month from the said business. He was income tax payee. A sum of ₹50,000/- was spent on transportation of the dead body of the deceased and on performing of last rites. A sum of ₹4 crores was claimed as compensation for his death in the motor vehicle accident.

8. Second deceased in the accident Amit Sohal was a student of B.Com, IInd year. Claimants alleged that he was cultivating about 50 acres of land and used to earn ₹8000/- per month. Compensation of ₹25 lacs was claimed for his death in the motor vehicle accident.

9. In the third claim petition filed by Sivek Sohal, it was alleged that he was aged 16 years and was student at the time of accident. He suffered multiple grievous and serious injuries on various parts of body and was operated upon for fractures sustained by him. A sum of ₹50,000/- was spent on his treatment. He had to miss one precious year of his studies and had to take medicines regularly. A sum of ₹2 lacs was claimed as compensation for the injuries suffered by him.

FAO No. 25 of 2001

10. Learned counsel for claimants-appellants has argued that the deceased was doing business in India as well as in Philippines. From his 60 acres of land he was having income of ₹2 lacs per month. While calculating amount of compensation, the Tribunal has considered income of the Subhash Sohal as reflected in income tax return filed in India but no notice was taken of income tax returns filed in Philippines on the ground that these returns were not duly attested by Embassy. He has argued that on the

date of accident, the deceased alongwith his wife and two sons was going from Chandigarh to Delhi to catch flight for Philippines and the accident took place on the way, when he was near Gharaunda on G.T. road. This shows that the deceased was having capacity to travel by air and there is substance in statement of claimant about his business at Philippines. There was no reason for the Tribunal to ignore the income tax return filed at Philippines placed on record by claimants.

11. Learned counsel for respondents have argued that the Tribunal while assessing amount of compensation has considered income tax return filed by the deceased for the assessment year 1995-96 (Ex. P-12). Other returns claimed to have been submitted at Philippines were not corroborated by any other evidence on record, as such, the Tribunal has rightly ignored the same. Even passport of deceased was not produced to prove his stay at Philippines while engaged in business there. The amount of compensation awarded by the Tribunal was just and reasonable keeping in view the price index in the year 1997.

12. Tribunal has held age of the deceased as 50 years. As per observations of Apex Court in case of **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54** and **Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447**, claimants are entitled to 30% addition in income of the deceased towards future prospects. The deceased left behind his wife and two children. They are entitled to compensation for loss of consortium for the wife and loss of love and affection care and guidance for minor children, which was not awarded by the Tribunal. Keeping in view the fact that the accident had taken place

in the year 1997, wife of the deceased is allowed compensation of ₹40,000/- for loss of consortium and children are also allowed an equal sum for loss of love and affection, care and guidance.

13. The Tribunal took income of the deceased on the basis of income tax return for the assessment year 1995-96 (Ex. P-12). The income tax return mark 'A' stated to have been filed by the deceased at Philippines, were discarded as not duly proved. It was also observed that the deceased was owner of land measuring 60 acres. For the loss of supervision of this land by the deceased, the Tribunal allowed compensation of ₹20,000/-.

14. On the date of accident, the deceased in his self-driven car was going to Delhi with family to catch flight for Philippines. Claimant-Vinay Sohal while appearing as PW-1 has stated that her husband, who was Non-Resident Indian (N.R.I.), was having business at Jalandhar as well as Philippines. He had employed two managers out of whom one was looking after the business at Jalandhar and another at Philippines. At Philippines, the deceased was running finance business while at Jalandhar he was doing a business of raw-rubber. He used to live for two months at Philippines and then for two months at Jalandhar. However, she was not aware as to what had happened to business of her husband at Philippines after his death as she did not visit Philippines thereafter. Besides above business, the deceased was owning 60 acres of agricultural land, which was joint in the name of claimant-Vinay Sohal and deceased. As per income tax return filed by the deceased for the assessment year 1995-96, he was having income of ₹1,18,298/- plus ₹14575/- as interest income. Claimant has also placed on file a wealth tax return filed by her husband on 26.05.1995

(Ex. P-9) and various assessment orders and receipts of payment of advance tax. She has also filed copy of income tax return filed by her husband at Philippines as mark 'A'. The Tribunal in the absence of any evidence to prove these income tax returns did not rely on the same. Claimant certainly had documentary evidence regarding business of her husband at Philippines but has not come with any explanation or reason for not producing the same. She could examine the Manager, who was looking after the business of the deceased at Philippines and produce account books maintained by him or could produce any other evidence to prove income of her husband at Philippines. However, it is proved on file that deceased was N.R.I. Tribunal ignored a vital piece of evidence on file, which confirms status of deceased as N.R.I. Claimants placed on file Ex. P-27 and Ex. P-30, copies of two assessment orders issued by Income Tax Department, which reads as follows:-

*"INCOME TAX DEPARTMENT
WARD 1(2), JALANDHAR*

- | | | | |
|----|---|---|---|
| 1. | <i>Year of assessment</i> | : | <i>1991-92</i> |
| 2. | <i>Name of the assessee</i> | : | <i>Sh. Subhash Sohal c/o
Sohal & Associates,
Sodal Road, Jalandhar.</i> |
| 3. | <i>Status</i> | : | <i>Individual</i> |
| 4. | <i>Whether resident/resident
but not ordinarily resident</i> | : | <i>R & OR.</i> |
| 5. | <i>Valuation date</i> | : | <i>31.3.</i> |
| 6. | <i>Section and sub-section
under which the assessment
is made</i> | : | <i>16 (3)</i> |

ASSESSMENT ORDER

Return declaring net wealth of ₹18,66,100/- was filed by the assessee on 31.10.1991, which was processed u/s 16 (1) (a) on 16.11.1991. Later on the case was picked-up for selective scrutiny. Notice u/s 16(2) was issued and served upon the assessee in response to which Sh. D.S. Walia, counsel of the assessee attended the proceedings and the case was discussed.

2. Vide letter dt. 08.1.1993, Sh. Walia claimed exemption of wealth u/s 5 (1) (xxxiii). The assessee has filed copy of passport as well as copy of NRI/account in support of his claim. In view of the information filed the wealth return is exempted u/s 5(1) (xxxiii).

Issue documents.

Dated :- 1.03.93

(V.K. NAGPAL)
Wealth-Tax Officer,
Ward. 1(2), Jalandhar.”

“INCOME TAX DEPARTMENT
WARD 1(2), JALANDHAR

1. Year of assessment : 1990-91
2. Name of the assessee : Sh. Subhash Sohal c/o
Sohal & Associates,
Sodal Road, Jalandhar.
3. Status : Individual
4. Whether resident/resident : R & OR.
but not ordinarily resident
5. Valuation date : 31.3.
6. Section and sub-section : 16 (3)
under which the assessment
is made

ASSESSMENT ORDER

Return declaring net wealth of ₹18,53,400/- was filed by the assessee on 28.11.1991, which was processed u/s 16 (1) (a) on 16.1.1992. Later on the case was picked-up for selective scrutiny. Notice u/s 16(2) was issued and served upon the assessee in response to which Sh. D.S. Walia, counsel of the assessee attended the proceedings and the case was discussed.

2. Vide letter dt. 08.1.1993, Sh. Walia claimed exemption of wealth u/s 5 (1) (xxxiii). The assessee has filed copy of passport as well as copy of NRI/account in support of his claim. In view of the information filed the wealth returned is exempted u/s 5(1) (xxxiii).

Issue documents.

Dated :- 1.03.97

(V.K. NAGPAL)
Wealth-Tax Officer,
Ward. 1(2), Jalandhar.”

15. These assessment orders prove that deceased was 'Non Resident Indian' who got exemption of wealth tax return from Income Tax Department. Even if return mark 'A' and certificate of auditor with regard to income of deceased are ignored still it can be presumed that deceased was N.R.I. and having some income abroad while living in Philippines, which in the absence of cogent and convincing evidence is assessed as ₹1 lac per annum.

16. This is also not disputed that the deceased was owning 60 acres of agricultural land with his wife. The Tribunal after accepting this fact had added a sum of ₹20,000/- in the compensation amount towards loss of supervision of the land by the deceased. This amount has been added in total amount of compensation instead of adding the same towards annual loss of income to claimants. I am of the opinion that this income should have been added in annual income of the deceased before applying the multiplier.

17. In view of my above discussion, the compensation to which claimants are entitled, is reassessed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased (as assessed by the Tribunal) and income in Philippines	(₹118298+100000)= ₹218298 per annum
(ii)	30% of (i) above to be added as future prospects	(₹218298+₹65490)= ₹283788 per annum
(iii)	Loss of supervision of agricultural land	₹20000 per annum
(iv)	Total annual income	(283788+₹20000) ₹303788 per annum
(v)	1/3 rd of (iv) deducted as personal expenses of the deceased	₹303788-₹101262)= ₹202526 per annum
(vi)	Annual amount of dependency after multiplier of 13 is applied	(₹202526X13) = ₹2632838
(vii)	Loss of consortium for the wife	₹40000

(viii)	Loss of love and affection care and guidance for the children	₹40000
(ix)	Transportation and last rites as assessed by the Tribunal	₹15000
Total		₹2727838 (rounded off to ₹2728000)

FAO No. 27 of 2001

18. The deceased was a young boy of 20 years of age and was a student of B.Com. IInd year. The Tribunal allowed a lump sum amount of compensation of ₹1,50,000/- to claimant-Vinay Sohal.

19. Learned counsel for the appellant has argued that the Tribunal has not assessed income of the deceased, who was a well educated boy. Relying on the observations of Apex Court in **Kishan Gopal and another vs. Lala and others, 2014 (1) SCC 244**, he has argued that in that case the deceased was 10 years of age and Apex Court assessed his notional income as ₹30,000/- per annum and awarded compensation of ₹5 lacs. Applying the ratio of judgment in ***Kishan Gopal's case (supra)***, compensation for death of Amit Sohal can be assessed.

20. Learned counsel for respondents have argued that the deceased was a young boy of the age of 20 years. The Tribunal has rightly assessed lump sum amount of ₹1,50,000/- as compensation as neither of the claimants was dependant on his income.

21. In ***Kishan Gopal's case (supra)***, deceased was 10 years of age and the Apex Court has assessed his notional income as ₹30,000/- per annum. In this case deceased was a young boy of the age of 20 years and was a student of B.Com. IInd year. His parents were well established in

life and financially sound and would have provided him all type of assistance in studies, so as to give him avenues to settle in life. Applying the ratio of judgment in case of ***Kishan Gopal's (supra)***, I assess notional income of the deceased (Amit Sohal) in the year of accident i.e. 1997 as ₹30000/- per annum after deduction towards personal expenses. As per norms settled in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, multiplier applicable in this case is 18. Claimant-Vinay Sohal, who is mother of the deceased (Amit Sohal), is awarded compensation of ₹40,000/- for loss of estate, love and affection besides a sum of ₹15,000/- towards transportation and funeral expenses.

22. In view of my discussion above, the compensation to which claimant is entitled, is reassessed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹30000 per annum
(ii)	Amount of dependency after multiplier of 18 is applied	(₹30000X18) = ₹540000
(iii)	Loss of estate, love and affection	₹40000
(iv)	Transportation and last rites as assessed by the Tribunal	₹15000
<i>Total</i>		₹595000

FAO NO. 28 of 2001

23. Learned counsel for the appellant has argued that claimant-Sivek Sohal had sustained serious injuries in the accident. He was shifted to Arpana Hospital and then to Civil Hospital, Karnal. He was operated for fracture of left shoulder/arm and a plate was inserted. He remained admitted in hospital for 1½ month. The Tribunal took medical expenses of claimant as ₹11,187/- and allowed a lump sum of ₹20,000/- for medicines and future treatment ignoring the fact that Dr. M.S. Gupta, who had treated

the claimant, has stated that claimant would be required to undergo another operation for removal of implants, which will cost around ₹9000/- to ₹10,000/-. No compensation was allowed for loss of studies to claimant, attendant charges and a lump sum amount of ₹10,000/- was awarded towards pain and suffering, special diet and transportation expenses etc., which is also on lower side.

24. Claimant-Sivek Sohal appeared as PW-2 and has stated that after the accident he was taken to Arpana Hospital from where he was brought to Civil Hospital, Karnal and then to a private hospital at Panchkula. He remained admitted in the hospital for about 1½ month. At that time he was student of 10th class and could not continue his studies due to the injuries suffered by him. Even after the treatment he has not fully recovered and cannot lift weight with his arms. In cross-examination he has stated that he appeared in matriculation examination in the year 1998 but failed. He remained at his house as he was advised another operation for removing the plate. Dr. M.S. Gupta, who treated the claimant, appeared as PW-3 and has stated as follows:-

“On 06.07.1997, Shivek 18 years male came to me. I examined him and found that he was having fracture shaft of humerus left. I advised for his admission in Verma Maternity Centre and Nursing Home, 270, Sector 6, Panchkula. I have brought treatment record of this patient. I operated him on 06.07.1997 and fixed the fracture with the plate. He was discharged from the hospital on the next day i.e. on 07.07.1997. The patient remained under treatment for about

two months. I charged ₹3000/- as my operation fee vide receipt Ex. P-1. ₹2200/- were charged as hospitalization charges by Verma Maternity Centre and Nursing Home vide receipt Ex. P-2. Medicines and implant was purchased by the patient from outside. Medicines mentioned in bill Ex. P-3 and Ex. P-4 were prescribed by me. Implant mentioned in bill Ex. P-5 was also used by me in operation. Another operation would be required to remove the implants. The same may cost another ₹9000/- to ₹10,000/-.”

25. Claimant has placed on file medical bills. While allowing compensation towards medical expenses of claimant, the Tribunal has taken into account the fact that he required another operation costing him around ₹9000/- to ₹10,000/-. However, the Tribunal has not allowed any compensation for loss of studies to claimant and charges of attendant and future medical care, physiotherapy required by the claimant. Keeping in view above facts, compensation awarded towards medical expense and future medical treatment is enhanced to ₹25,000/-. Claimant is also allowed compensation of ₹10,000/- towards loss of studies and ₹5000/- towards attendant charges. However, I maintain the compensation of ₹10,000/- allowed by the Tribunal towards pain and suffering, special diet, transportation etc.

26. As a sequel of my discussion above, all the appeals have merit and are accepted. Award of the Tribunal is modified and compensation allowed to claimants in **FAO No. 25 of 2001**, for death of **Subhash Sohal**, is enhanced from **₹10,37,245/-** to **₹27,28,000/-**; for death of **Amit Sohal** in

FAO No. 27 of 2001 from ₹1,50,000/- to ₹5,95,000/- and for the injuries suffered by **claimant-Sivek Sohal** in **FAO No. 28 of 2001**, from ₹30,000/- to ₹50,000/-. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of claim petition till actual realization. Respondent no. 3-Insurance Company being insurer of the offending vehicle will deposit the share of claimants-appellants in their bank accounts or pay the same through demand drafts.

December 22, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No