

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3844 of 2001

Date of decision : April 22, 2016.

Apurva Kalia

.... Appellant

Vs.

Harvinder 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. Animesh Sharma, Advocate,
for the appellant.

Mr. Neeraj Khanna, Advocate,
for Mr. Ravinder Arora, Advocate,
for respondent No.4.

Mr. Harjinder Singh, Advocate,
for respondent No.7.

AMOL RATTAN SINGH, J.

1. This is an appeal filed by Apurva Kalia, the son of Miran Kalia, who unfortunately died at the age of 46 years, in a motor vehicle accident that took place on 26.11.1993 near Patiala, involving Maruti Car bearing registration No.HNE-9620 and a truck bearing registration No.PJU-7127.

Miran Kalia was travelling in the car, which was driven by respondent No.5, owned by respondent No.6 and insured by respondent No.7.

The truck was driven by respondent No.1, was owned by respondents No.2 and 3 and was insured by respondent No.4.

Four other claim petitions were also filed before the learned Motor Accident Claims Tribunal, Patiala, by those injured in the said accident, which were all decided by a common Award dated 90.02.2001. However, no appeal filed by the claimants in those claim petitions, has been brought to the notice of this Court.

2. After detailed consideration of the evidence, on the issue of whether negligence in causing the accident was that of respondent No.1 or respondent No.5, the learned Tribunal held that it was respondent No.1, i.e. the driver of the truck, who was guilty of negligence.

No appeal filed by respondents No.2 and 3, or by the insurance company that had insured the said truck (respondent No.4), is shown to have been filed before this Court, even though that query was put to learned counsel for the respondents.

Hence, this Court is only to decide the issue of whether or not the appellant in this appeal is entitled to enhancement of compensation, as claimed by him.

3. The appellant had claimed a compensation of Rs.20,00,000/- in his claim petition, stating that his mother, aged 46 years, was drawing Rs.9000/- per month as salary, being a Reader in the Punjabi University, Patiala, and was a Ph.D. by qualification. He also claimed that she was to retire at the age of 60 years and would have been promoted as a Professor if she had continued to live.

It was further claimed that his parents having divorced each other, he was the only legal heir and claimant to the compensation. That

fact was accepted by the Tribunal, upon production of a judgment of this Court, passed in FAO No.92-M-1989, granting a decree of divorce to Miran Kalia and her husband Gopal Kishan Kalia.

4. The insurance company, i.e. present respondent No.4, had raised an objection that Apurva Kalia, not being either dependent on his mother, nor he himself providing any financial support to her as per his own admission, would not be entitled to claim any compensation on account of her death.

That contention of the insurance company was partly accepted by the Tribunal vide its impugned Award, holding that Apurva Kalia was not entitled to any compensation by way of loss of income, but he would still be entitled to compensation of Rs.50,000/- on account of 'no fault liability', Rs.2000/- by way of funeral expenses and Rs.5000/- by way of the loss of company of his mother, and a further Rs.2500/- for loss of estate.

Therefore, he was awarded a total compensation of Rs.59,500/-.

5. It was further held by the learned Tribunal, on the basis of evidence led before it in the form of the case file of the criminal case registered against respondent No.1, that he was not holding a valid driving licence. With respondents No.1 and 3 having chosen not to appear before the Tribunal after having filed their respective written statements, they had been proceeded against *ex parte*. Respondent No.2 had died, as noticed by the Tribunal.

However, the insurance company was not absolved of its liability to pay compensation but was given recovery rights from respondent No.3, i.e. the owner of the truck, for breach of the insurance policy.

6. Mr. Animesh Sharma, learned counsel for the appellant,

submitted that the Tribunal wholly misdirected itself in not appreciating the fact that regardless of the dependency of the appellant on his mother, he would still be entitled to compensation even for loss of her income, after appropriate deductions from such income, of the amount that she may have spent on herself.

He further submitted that the deceased being in a permanent salaried job in the University, even loss of future prospects of income were required to be awarded as compensation to the appellant, in terms of the law laid down in Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121, read with the ratio of the law laid down in Rajesh and others vs. Rajbir Singh and others (2013)(9) SCC 54 and Vimal Kanwar and others vs. Kishore Dan and others (2013)(7) SCC 476.

Still further, learned counsel submitted that the amount awarded for funeral expenses and loss of love and affection are also wholly inadequate, in terms of the law laid down in the aforesaid judgments. He, therefore, submitted that the compensation needs to be suitably enhanced, in terms of the law settled on the issue.

7. Mr. Neeraj Khanna, learned counsel appearing for the insurance company, submitted that the claim petition was initially filed by the present appellant, before the learned Tribunal, under Section 166 of the Motor Vehicles Act, 1988 (hereinafter to be referred to as the Act), but later an application for amendment was made, that it be taken to be a petition under Section 163-A of the said Act. Hence, he submitted that this Court would not enhance the compensation to more than what was already awarded.

Mr. Sharma, learned counsel for the appellant, on the other hand submits, that the Tribunal after considering the application of the appellant-claimant, specifically rejected the same, holding that the provisions of Section 163-A are only “interim in nature” and eventually went on to hold that the application became immaterial once the main claim petition itself filed under Section 166 was being disposed of. Therefore, compensation by the Tribunal had been awarded not under Section 163-A, but under Section 166 of the Act. Hence, this Court would not revert to status quo ante, when the respondents themselves had not filed any appeal against that finding of the Tribunal, in the impugned Award itself, rejecting the application under Section 163-A.

8. Having heard learned counsel for the parties and having perused the impugned Award, the first question that is to be decided, is as to whether the claim of the appellant for enhancement of compensation is to be considered in terms of Section 163-A, or Section 166, of the said Act.

Mr. Khanna drew attention to paragraphs 10 and 11 of the impugned Award, in which the Tribunal has noticed as under:-

“10. At the fag end of the trial of this case, the claimant also filed an application under Section 163-A of the Motor Vehicles Act on 21-10-2000 in which he invoked the provisions of the amended Motor Vehicles Act, 1988 which came into force with effect from 14-11-1994 and prayed that the compensation to the tune of Rs.20 lacs with costs and future interest at the rate of 18% per annum be awarded to him from the date of the filing of the claim application.

11. This application was also contested by the respondents by filing detailed replied.” (sic)

However, before that, the impugned Award begins as follows:-

“This award shall dispose of five claim applications filed under section 166 of the Motor Vehicles Act, the particulars of which have been given above. All these claim applications arise out of the same accident which took place on 26-11-1993 near Punjabi University, Patiala.”

Thereafter, in paragraph 56 to 58 of the Award, the Tribunal considered the effect of the application filed under Section 163-A of the said Act and after considering the said provision, and a judgment of this Court in **National Insurance Company Ltd. v. Smt. Indu Sharma and others** (2000 (1) PLR 417), held that Section 163-A is only applicable by way of grant of interim compensation, till the final decision of the main claim petition.

The Tribunal concluded as follows, after quoting from the aforesaid judgment:-

“58. Therefore, the provisions of Section 163-A are only interim in nature. Since the main petition is coming up for disposal, therefore, the submission of the learned counsel for the claimant for granting him compensation under S.163-A becomes immaterial.”

9. Before considering the above, it is necessary to state here that this appeal is one of those many cases, the records of which were burnt in the fire incident that took place in January 2011 in the record room of this Court. Hence, other than the Award of the Tribunal and the memo of parties, the record of the case is not available to this Court, including the application moved before the Tribunal under Section 163-A of the Act.

Hence, obviously, this court can only go as per the pleadings before it and as per submissions made by the counsel, by reference to the Award of the Tribunal.

10. Having said that, it is equally obvious that though some application for grant of relief under Section 163-A of the Act was moved before the Tribunal, the Tribunal treated that to be an application for release of interim compensation, during the pendency of the main claim petition and actually rejected the said application, though without dismissing it, but holding it to be immaterial because the main petition filed under Section 166 was being decided by it.

The respondents, including the insurance company (respondent No.4), are not in appeal against that finding of the Tribunal rejecting the claim under Section 163-A. Therefore, the reasoning adopted by the Tribunal, to arrive at that finding, is not being gone into. Hence, the Tribunal eventually having decided the claim petition as one filed under Section 166 of the Act, this appeal is also being considered taking it to be so. Therefore, accepting that, now it is to be seen as to whether the compensation of Rs.59,500/- is adequate compensation or not.

11. The first issue is as to whether only a dependent on the income of the deceased can claim compensation, or whether any legal heir is entitled to compensation for the death of a person in a motor vehicles accident.

In fact, it is well settled now that it is not only dependents who can claim compensation for the death of a victim in a motor accident. The rationale behind this is not far seek, inasmuch as, had the deceased continued to live, two situations would normally exist:-

i) Even if a legal heir/family member was not dependent on

the income of the deceased, and was having his/her own income, there would be nothing to prevent the deceased to use a part of his/her income to bestow gifts on such family member/legal heir, in cash or kind. Especially, if the legal heir is an immediate family member, gifts in kind, from the income of the deceased, may often be given, or given from time to time, (without any proof thereof, being gifts within the family of small to big items of daily use etc).

ii) More importantly, even if very minimal or no gifts are given, then the remaining income of the deceased, as he/she did not spend upon himself/herself, would normally go into his/her saving and eventually form part of his/her estate, which would then devolve upon his/her legal heirs.

Naturally, if the life of the deceased is cut short in a motor vehicles accident, the savings would stop immediately, thereby reducing the corpus of the estate by a large or small amount, depending upon the approximate number of earning years remaining to the deceased, had he/she remained alive.

Thus, it is for that purpose that a multiplier is applied to the income of the deceased, in such like cases.

Hence, in a case where the life of a person is cut short, as in a motor accident, after making an appropriate deduction in the income of the deceased, as per normal parameters, the remaining expected income is awarded as compensation under that head to the claimant in such a claim petition, regardless of whether he or she was dependent on the income of the deceased.

The issue, in any case, now stands settled by the hon'ble

Supreme Court, in **Smt. Manjuri Bera v. The Oriental Insurance Company Ltd. and Anr.**(2007) 10 SCC 643, holding that for entitlement to compensation, dependency of the claimant on the income of the deceased is not a pre-requisite.

12. As a matter of fact, the same rationale also applies while awarding loss of future prospects of income, i.e. the higher income that the deceased would be expected to have earned during the remaining working years of his/her life, taking into consideration inflation, chances of promotion etc.

It was therefore, accordingly held in **State of Kerala SRTC v. Susamma Thomas** (1994) 2 SCC 176, and thereafter followed with variations in *Sarla Verma, Rajesh v. Rajbir and Vimal Kanwars'* cases (supra) etc.

The same principles, would apply, in the present case also, in the opinion of this Court.

13. Having held as above, the actual amount of compensation that would be payable under the head of loss of income, on parameters as per settled law, would need to be determined by this Court.

It is equally obvious that in terms of settled parameters in respect of funeral expenses and loss of love and affection also, the compensation given by the Tribunal is wholly inadequate.

14. Coming first to the compensation under the head of loss of income of the deceased, to the appellant, i.e. the son of the deceased.

The appellant had claimed that his mother, deceased Miran Kalia, was drawing a salary of Rs.9000/- per month, as a Reader in the Punjabi University, Patiala.

A perusal of the Award shows that one P.S.Anand appeared as AQ1 before the Tribunal and brought the service record of Miran Kalia and proved her last pay certificate as Ex.P1, as also her qualification as a Ph.D. in Political Science, as Ex.P15. Some rules were also exhibited before the Tribunal as Exs.P16 to P20. However, since there is no discussion as to the nature of the rules, it can only be presumed that these rules were in relation to the future prospects of promotion and career advancement of Ms. Miran Kalia, relatable to her length of service and her qualifications.

Yet, in the absence of any specific amount given by the Tribunal in its Award, to be the proved salary of Ms. Miran Kalia, this court cannot take any specific sum to be her last drawn income, to calculate the loss of actual income.

Hence, in the absence of records before this Court, they having been burnt, as already noticed earlier, there is no choice but to remit the matter to the Tribunal, for determination of the last drawn salary of Miran Kalia at the time of her death.

Upon such determination, the Tribunal would apply the following parameters, to award final compensation to the appellant, so that the matter is not again put through a second phase litigation, at least upto this Court.

15. Upon determination of the monthly income of Miran Kalia, obviously it would be multiplied by 12 to determine her annual income, from which half that amount shall be deducted towards her personal expenses, she being a single person not spending her income as a routine on any of her family members, who in any case, were not living with her.

The appellant himself having admitted that his mother was not

sending him any money on a regular basis, it has to be presumed that she could be spending half her income on herself. A perusal of the Award shows that Miran Kalia had saved Rs.18.20 lacs, lying deposited in her savings bank account. Therefore, had she continued to live, obviously after spending some amount on herself, she would have been saving the rest, which would then eventually devolve, upon her natural death, on the claimant, he being her only son and legal heir.

Of course, an argument can be raised that she may have spent more than half the amount of salary on herself, the counter to which would be that she may have spent less than half on herself. Those being imponderable variables, the proper course would be to adopt a mean of half the income spent on herself, she having no other liability and even her son not being dependent upon her.

In other words, the same parameters as have been laid down in Sarla Verma's case (supra), for deduction in the income of a deceased bachelor, are to be applied in the present case.

Consequently, after deducting half the amount of her annual income towards her personal expenses, to the remaining half, the Tribunal would apply a multiplier of 13, as laid down in Sarla Verma's case, Miran Kalia being 46 years of age at the time of her death.

It may also be noticed here that, admittedly, she had 14 years service remaining with the University, before she retired; hence, a multiplier of less than 13 in any case would be without any rationale, in the opinion of this Court.

16. Coming then to the loss of future prospects of income, the deceased being admittedly in a permanent salaried job in which she would

be expected to earn not only annual increments but also higher salaries upon promotion and upon pay revisions etc.

Though the issue of addition of future prospects of income is under consideration of a larger Bench of the hon'ble Supreme Court, that is essentially, as can be discerned from the order of reference passed in **National Insurance Co.Ltd. v. Pushpa**, (2015) 9 SCC 166, on a question of whether such loss of prospective income can be added even in cases where the deceased was not in salaried employment. In the present case, the deceased was in stable salaried employment.

Hence, after applying a deduction of half the last drawn annual salary of the deceased, the Tribunal would add 30% of that sum and again apply a multiplier of 13 to such added sum, to determine the loss of future prospects of the deceaseds' income, to the appellant-claimant.

The above would then be the total compensation to be awarded to the appellant, under the head of loss of income, including loss of future prospects of income.

17. It may also be stated here that while calculating the monthly/annual income of the deceased, the amount paid by her towards her provident fund etc. shall not be deducted to determine her net income. Only the amount payable by her by way of income tax, shall be deducted, before further deducting 50% of the net sum, towards her personal expenditure.

18. Coming last to the 'conventional heads' of compensation to be awarded.

Whereas the Tribunal awarded Rs.2000/- for funeral expenses, in *Rajesh v. Rajbir and Vimal Kanwars'* cases (supra), Rs.25,000 was awarded under this head.

In *Vimal Kanwars'* case, the accident was of the year 1996, whereas in the present case, the accident is of the year 1993. Hence, a sum of Rs.20,000/- is awarded under that head to the appellant.

The Tribunal had awarded Rs.5000/- as loss of company of his mother to the appellant and Rs.2500/- for loss of estate.

In the aforesaid judgments, the compensation awarded to children of the deceased varies from Rs.1,00,000/- to Rs.2,00,000/- for loss of love and affection. In the present case, though the loss of a mother obviously cannot be understated, however, since the appellant was not living with her and was an earning major at the time of his mothers' death, a sum of Rs.50,000/- is awarded, under the head of loss of love and affection, which would cover the compensation for the loss of company also. Loss of estate has otherwise been compensated, under the head of loss of income.

19. The total amount of compensation to be calculated, as given above, by the Tribunal, would also carry interest @ 6% per annum from the date of the filing of the claim petition till the realization thereof. No doubt, the hon'ble Supreme Court has held that 9% interest should be granted in such cases, but keeping in view the fact that the enhancement of compensation would be considerable in the present case and the claim petition, as given in the Award, was filed in the year 1994, i.e. 22 years ago, the interest is being kept down to the minimum possible.

20. The appeal is thus allowed as above, but is remitted to the learned Tribunal, only for the purpose of calculation of loss of income, in terms of the parameters given hereinabove. Thereafter, no further appeal to this Court shall lie on the issue of enhancement of compensation, except in case of errors in the method of calculation, if any party is aggrieved thereof,

upon the final amount having been determined on the parameters given hereinabove.

In other words, though the final compensation is to be calculated by the Tribunal, it is virtually acting as an executing Court for distribution of the compensation wholly as per the parameters given hereinabove, with no discretion to the Tribunal in that regard. Hence, this Court having virtually determined the compensation, except for the purpose of calculation thereof on the basis of last drawn salary of the deceased, in terms of her pay certificate, another round of appeal to this Court would not lie, except if it is shown that the calculation has been wrongly made, or not as per the parameters laid down hereinabove.

No order as to costs.

April 22, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE