

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4015 of 2001

Date of Decision: 29 .09.2016

Swaranjit Singh

... Appellant

Vs.

Union of India 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?
3. Whether the order is speaking/reasoned?

Present:- None.

Amol Rattan Singh, J.

This appeal has been filed by the claimant, seeking enhancement of the compensation of Rs.2,30,400/- awarded by the learned Motor Accident Claims Tribunal, Chandigarh, vide the impugned Award, dated 02.08.2001, on account of the death of the father of the appellant -claimant, in a motor vehicle accident that took place on 17.02.1998.

Though in the impugned Award the head note states that the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, however, in the body of the Award, it is specifically stated that no finding with regard to the rash and negligent driving of respondent No.3, i.e. the driver of the bus in question, is required to be recorded as the claim petition had been filed under Section 163-A of that Act. This fact is obviously not disputed because even in the grounds of appeal filed on behalf of the

appellant before this Court, it is stated that the claim petition had been filed under Section 163-A.

2. The facts, as taken from the impugned Award, are that it was stated in the claim petition that on 17.02.1998, at about 6:15 pm, Satinder Singh, father of the appellant, alongwith Satinder Singhs' friend Darshan Singh, were waiting for a bus near the New Mohali Barrier Bus-stand, and upon bus bearing registration no.CH-01-G-5574 having come and stopped in front of them, when Satinder Singh was boarding the bus from the front door, the bus driver, i.e. respondent no.3, allegedly moved the bus, as a result of which Satinder Singh fell on the road and received injuries. The bus is thereafter stated to have been stopped a few yards ahead.

Satinder Singh was taken to the local hospital from where he was referred to the PGI Chandigarh, where he succumbed to his injuries on 18.02.1998, i.e. the next day.

A criminal case is also stated to have been registered against respondent no.3.

3. Satinder Singh was stated to have been working as a Postal Assistant in the General Post Office at Sector 17, Chandigarh, at a monthly salary of Rs.5360/- and was aged about 50 years. The claimant consequently sought a compensation of Rs.4,86,680/-.

4. Upon notice issued to the respondents, respondents No.1 and 2, i.e. the Union of India and the General Manager, Chandigarh Transport Undertaking, filed a joint written statement admitting that respondent no.3 was driving the bus in question but that the person who tried to board the bus was under the influence of liquor, due to which he fell down and hit his head against the berm of the road. It was therefore denied that the accident took

place due to the negligence driving of respondent no.3.

5. Upon the aforesaid pleadings, the learned Tribunal framed the following issues:-

1. Whether the claimant is the legal representative of the deceased? OPP
2. Whether the accident took place due to the rash and negligent driving of respondent no.3 while he was driving vehicle no.CH-01-G-5574? If its effect? OPP
3. if issue No.1 and 2 are proved, to what amount of compensation, the claimant is entitled to and from whom of the respondent? OPP
4. Relief.

5. The appellant-claimant stepped into the witness box himself and also examined one Partap Singh as PW1, and tendered a copy of the FIR registered against respondent no.3, by way of documentary evidence.

Respondent no.3 testified on behalf of the respondents.

6. As already stated, on the issue of negligence, the Tribunal found no necessity to record any finding, the claim petition having been filed under Section 163-A of the Act of 1988, on the principle of “a no fault liability”.

On the issue of whether the appellant was a legal representative of the deceased, strangely, it was argued on behalf of the respondents before the Tribunal, that since he (claimant) was himself working as a Constable, he could not be considered to be dependent upon the deceased and as such, the claim petition was liable to be dismissed.

The Tribunal, upon citing the judgment in **Gurajat State Road Transport Corporation v. Ramanbhan Prabhat Bhai** 1987 ACJ 561, held that to be a legal representative and a claimant in a motor vehicle accident

case, the claimant need not have been dependent on the deceased.

Consequently, even though the widow of the deceased, who was originally also a claimant, had died during the pendency of the claim petition, the present appellant was entitled to continue with the claim petition, in which he was already impleaded as claimant no.2.

7. As regards the amount of compensation to be paid, the Tribunal recorded a finding that the salary of the deceased, i.e. Rs.5325/-, was not disputed by the respondents, and that his 'carry home salary' was Rs.3625/- per month.

Of the aforesaid sum, the Tribunal assessed that the deceased would be spending at least Rs.1225/- on himself, thus, leaving a sum of Rs.2400/-/- as contribution towards household expenses.

Further finding that the deceased was admitted to be 50 years of age, he would have drawn his salary for 8 years and as such, a multiplier of 8 was applied to the annual income of Rs.28,800/- (Rs.2400/- x 12), thereby coming to a total loss of income of Rs.2,30,400/-.

8. That was the total compensation awarded, alongwith interest @ 9% per annum thereupon, running from the date of the filing of the claim petition, till its realization.

9. As already noticed, the records of this case had been burnt in a fire incident of January 2011, and thereafter, a part of the case file was reconstructed from the records of the learned counsel for the parties, to the extent of the memo of parties before this Court, the grounds of appeal and the impugned Award of the Tribunal.

Thereafter, learned counsel for the appellant had undertaken to complete the entire record, as recorded in the order dated 25.04.2014, but had

not been able to do so even though a last opportunity had been granted to him for the same, vide an order dated 17.10.2014. Thereafter, it seems only the paper book as described above was reconstructed, after which, on 08.04.2015, both learned counsel for the parties appeared, i.e. for the appellant and respondents, and sought an adjournment.

The matter was adjourned without it having been heard thrice thereafter and eventually when it came up for hearing on 11.04.2016, none appeared for the parties. The appeal being of the year 2001, in motion hearing, it was taken up by this Court, even in the absence of counsel for the respondents, recording in the order that the Union of India had not been served, but since the contesting respondent was the Chandigarh Transport Undertaking, which had been served and was earlier represented by its counsel, there was no ground for further adjourning the matter.

10. Consequently, having considered the Award of the Tribunal as also the grounds of appeal filed on behalf of the appellant, it is seen that enhancement of compensation is sought on the ground that the Tribunal assessed the monthly dependency of the claimant on the basis of the 'carry home salary' of Rs.3625/- per month, of the deceased, whereas as per the appellant, the complete salary of Rs.5325/- per month should have been considered to be his income.

Further, it is contended that a multiplier of 11 and not 8 should have been applied and that even after deduction of an appropriate amount towards the personal expenses of the deceased, the loss of income would work out to Rs.4,64,676/-.

It has been further stated in the grounds of appeal that Rs.22,000/- should have been awarded towards the funeral expenses of the

deceased, thereby making the total compensation payable to be Rs.4,86,676/-.

11. Having considered the above, the first thing that obviously needs to be again noticed is, that the claim petition was filed under Section 163-A and not under Section 166 of the Motor Vehicles Act, as admitted in the grounds of appeal. Thus, the parameters on which the appellant is seeking enhancement of compensation cannot be applied, in the manner sought to be applied, in the present case.

Section 163-A (2) stipulates that in a claim petition filed under sub-section (1) of this provision, the wrongful act or neglect or default of the owner of the vehicle involved in the accident, need not be pleaded or established.

Sub-section (1) of Section 163-A stipulates that the owner of the motor vehicle (concerned) or the authorised insurer thereof, shall be liable to pay compensation in the case of death or permanent disablement, due to a motor vehicle accident, as indicated in the 2nd Schedule to the Act, to the legal heirs of the victim.

12. The 2nd Schedule was incorporated in the Act alongwith Section 163-A, w.e.f. 14.11.1994, and though sub-section (3) of Section 163-A provides that the Central Government may amend the 2nd Schedule from time to time in view of the cost of living, factually no such amendment has taken place, even though 'recommendation' in that regard was made by the hon'ble Supreme Court from time to time, including in the case of **Oriental Insurance Co.Ltd. vs. .Hansrajbhai V. Kodala and others** (2001) 5 SCC 175 and **Puttamma and others vs. K.L. Narayana Reddy and another** (2013) 15 SCC 45.

In the present case, the accident took place on 17.02.1998, about three years and three months after the notification of the 2nd Schedule.

As per clause 3 of the said Schedule, the following 'General Damages', in the case of a deceased victim, are to be paid:-

i)	Funeral expenses	Rs.2000/-
ii)	Loss of consortium, if beneficiary is the spouse	Rs.5000/-
iii)	Loss of Estate	Rs.2500/-
iv)	Medical expenses- Actual expenses incurred before death supported by bills/vouchers but not exceeding	Rs.15,000/-

Thus, in the present case, the 1st claimant having been a widow of the deceased, even though she died during the pendency of the claim petition, in the opinion of this Court, compensation towards loss of consortium would still be awardable, towards her estate. Even accepting that, the compensation awardable under clauses (i), (ii) and (iii) above, would be Rs.9500/-.

Since no evidence was led with regard to any medical expenses incurred, and the deceased himself having been hospitalized, between the date of accident and death, for one day, no amount would be awardable to the appellant-claimant under that head, the said amount obviously not having been claimed in view of the fact that the deceased was a Government servant in the postal department and his medical expenses therefore are presumed to have been reimbursed by the said department and as such, no evidence was led with regard to such expenditure.

13. Coming then to the loss of compensation on account of the loss of income of the deceased.

I agree with what is stated in the grounds of appeal, to the extent that it is not the 'carry home pay' but the net salary, i.e. gross salary, less

income tax that should have been taken into account by the Tribunal to calculate the loss of income to the claimant (including the deceased, widow of the victim).

As per the Schedule, when the deceased was between 50 to 58 years of age, as is the admitted case in the present case, and his annual income is between Rs.6600/- to Rs.6700/-, the compensation payable would be at least Rs.50,000/- after applying a multiplier of 11 to the annual income, which would be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself.

However, the calculations in the 2nd Schedule have been held to be arithmetically flawed, by the Supreme Court, in **Smt. Sarla Verma and others** vs. **Delhi Transport Corporation and another** (2009) 6 SCC 121, as is obvious from the simple multiplication applied in certain cases, in terms of the figures given in the Schedule.

Eventually, their Lordships held that where the number of dependents is 2 to 3, a 1/3rd deduction should be made towards the personal living expenses of the deceased and when the deceased was between the age of 46 to 50 years, the multiplier applied would be 10. In a case where the deceased was between 51 to 55 years old, the multiplier would be 9.

14. In the present case, it is seen that the gross annual salary of the deceased, with his monthly salary being Rs.5625/-, works out to Rs.67500/-

To that, a standard deduction of Rs.18,000/- would have been applicable in the assessment year 1998-99 (the deceased having died during the financial year 1997-98). Thus, after applying the aforesaid standard deduction on the annual salary of the deceased, the taxable income would be Rs.49,500/- even not factoring in any deduction under Section 80-C etc. of

the Income Tax Act.

In that assessment year, the minimum taxable income was Rs.5000/- and thus, the deceaseds' salary would have been tax free for that year at least.

Even presuming that subsequently his salary may have become taxable, a 5% tax cut can be imposed to the total income assessed, after the appropriate multiplier is applied to his annual salary. This would be so, because after standard deduction, and deductions under Section 80-C, he presumably would still be only within the 1st slab of 10% taxation, in which eventually, he would not be taxed to an extent of more than approximately 5% of his salary, in real terms. Thus, applying a cut of 5% to Rs. 67,500/-, the net annual salary works out to Rs. 64,125/-.

15. With the above figure, it is now to be seen that the appellant-claimant, admittedly being a Constable in the police, cannot be stated to have been dependent upon his father and therefore, with only the deceaseds' widow being dependent upon him at the time of his death, 50% of his salary is to be taken to have been spent upon himself. Thus, the annual dependent income would be Rs. 32,062.50/- to which a multiplier of 10 is applied, in terms of the ratio of the *Sarla Vermas'* case, the deceased being 50 years of age.

The total compensation for loss of income to the claimant (now only the single appellant), therefore works out to Rs. 3,20,625/-. To the aforesaid sum, the statutory amount of Rs.9500/-, under clause 3 of the 2nd Schedule to the Act of 1988 is to be added, (including the amount of Rs. 5,000/- payable to the late widow-claimant No. 1), thereby bringing up a total compensation of Rs. 3,29,625/-

Though it has been held by the hon'ble Supreme Court that a certain amount of increase in cost of living should be factored in to the compensation amounts given in the 2nd Schedule to the Act, however, in the present case, the Schedule having been enforced only three years and three months before the death of the victim, the figures are accepted as they are.

Thus, the compensation now awarded by this Court is Rs.99,225/-/- more than the compensation of Rs. 2,30,400/- awarded by the Tribunal.

This enhanced amount of compensation shall carry interest @ 6% per annum, from the date of the filing of the claim petition, till the date of realization thereof.

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

September 29 , 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE