

204.

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

FAO No.5647 of 2002 (O&M)

Date of decision:07.04.2016

Smt. Ashu Nagpal and others

... Appellants

versus

Jaswant Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

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

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

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. Service has been effected through publication on respondents 1 and 2. None appears.

2. The appeal is for enhancement of compensation for death of a male, aged 31 years, in an accident that took place on 23.07.1998. The claimants were widow, 2 minor children and parents.

3. The deceased was said to have dashed against a parked vehicle when the vehicle which was going ahead of him suddenly overtook the parked vehicle and when the deceased could not

maneuver to steer clear to the parked vehicle. The parking was found to be in the middle of the road and the Tribunal cast the liability of 25% as negligence as attributable to the deceased himself. I am of the view the assessment is correct and will discard the argument made by the counsel for the appellants that the entire blame must have been accorded only to the stationary vehicle.

4. The deceased was said to be running a handloom industry in Panipat and was shown to be an income tax assessee. He had returned an income of ₹ 1,50,000/- and paid tax of ₹ 16,983/- just before his death. The court took the income at ₹12,000/- per month, provided for 1/3rd deduction and applied a multiplier of 15 and assessed an amount of ₹14,40,000/- as the component of damages under all heads. However, it made a partial abatement of 25% for contributory negligence and provided for compensation of ₹10,80,000/-. The counsel for the appellants seeks for a modification of the award that ought to provide for a prospect of future increase of income, deduction of 1/4th instead of 1/3rd, application of 16 as the multiplier instead of 15 to conform to the judgment of the Supreme Court in **Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121** and also provide for loss of consortium, love and affection and other conventional heads in the manner provided in the judgment in **Rajesh Versus Rajbir Singh-2013(9) SCC 54**.

5. The counsel for the respondent argued that handloom industry is itself has not been lost and the estate was still available for putting to use and assess the income. According to him, a prospect of further increase cannot therefore be on the amount of ₹1,50,000/- shown as the income.

6. Considering the fact that the deceased was running an industry and made a gross income of ₹1,50,000/-, I will apportion his own managerial skills and ability to earn as ₹10,000/- per month and provide for 50% increase as a prospect on such assessment. After making a deduction of 10% as going towards tax, I will take the income at ₹13,500/- and work out the details and tabulate the various heads of claims as under:-

Accident	23.07.1998		
Age	31		
Occupation	handloom		
Claimants	Widow, 2 minor children and parents		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount (₹)	Amount (₹)
1.	Income	12,000	10,000
2.	Add,% of increase 30%/50%	1,50,000	15,000 less tax 13,500
3.	Deduction ½, 1/3, ¼, 1/5		10,125 (1/4 th)
4.	Multiplicand		1,21,500
5.	Multiplier		16
6.	Loss of dependence		19,44,000
7.	Medical expenses		
8.	Loss of consortium		1,00,000
9.	Loss of love and affection		1,50,000
10.	Loss to estate		5,000
11.	Funeral expenses		10,000
	Total	14,40,000	22,09,000

After making an abatement of 25% for the contributory negligence, the amount payable will be ₹16,56,750/-. In determining compensation, I have allowed for an amount of ₹1 lakh for loss of consortium and ₹50,000/- for each one of the minor children and parents, considering the fact that the accident had taken place in the year 1998 and interest itself will secure the amount of what is being provided since the decision in **Rajesh** (supra). The amount shall be distributed in the ratio of 2:2:2:1:1 amongst the widow, 2 children and parents respectively. The liability shall be in the same manner as determined already by the Tribunal. The additional compensation will attract interest at 7.5% from the date of petition till date of payment. Consistent with the finding already recorded by the Tribunal, the amount shall be paid by the Insurance Company and recovered from the owner and driver.

7. The award stands modified and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

07.04.2016
sanjeev