

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

FAO No.4387 of 2007

Date of decision : July 5, 2016.

Ram Partap and others

.... Appellants

Vs.

Chandigarh Transport Undertaking and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes

Present : Mr. Ashwani Arora, Advocate,
for the appellants.

Mr. Anoop Kumar Yadav, Advocate,
for Mr. Amit Arora, Advocate,
for respondent No.1.

Ms. Madhu Sharma, Advocate,
for respondent No.3.

AMOL RATTAN SINGH, J.

This is an appeal by the claimants before the learned Motor Accident Claims Tribunal, Chandigarh, seeking enhancement of the compensation awarded to them vide the impugned Award dated 03.08.2007.

2. The claim petition had been filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter to be referred to as the Act), by the four appellants-claimants (hereinafter to be referred to as the claimants), seeking compensation for the death of Maya Devi, aged 53 years, who met with a motor vehicle accident on 27.08.2004.

It was stated in the petition that she was travelling in a bus

bearing registration No.CH-01-G/5836, belonging to the first respondent herein, i.e. the Chandigarh Transport Undertaking, on the said date. The bus was being driven by respondent No.2, who had stopped it to enable passengers to get down from it. When Maya Devi was in the process of alighting from the vehicle, respondent No.2 is stated to have suddenly started it, due to which she fell down and received injuries. She was taken to the hospital, where she died on 02.09.2004, i.e. about six days later. It was claimed that about Rs.80,000/- were spent on her treatment and funeral expenses and that since she was a house wife, her income may be taken to be Rs.3300/- per month. In all, a compensation of Rs.10,00,000/- was claimed.

3. Upon notice issued to the respondents, respondent No.1 pleaded in its written statement that when the bus had reached near the Chandi Mandir Bus-Stop, 100 meters short of the stop, some passengers, as also the bus conductor, raised a noise that a lady passenger had jumped out of the bus, upon which respondent No.2 had immediately stopped the vehicle. On seeing the lady lying on the road in an unconscious condition, she was taken to the General Hospital, Sector-6, Panchkula and admitted there.

Thus, the entire negligence was attributed by respondent No. 1, to the deceased.

The written statement filed by respondent No.1 (the transport undertaking), was also adopted by respondent No.2, i.e. the bus driver.

4. The insurance company, i.e. respondent No.3, also denied the claim and further stated that the driver of the bus was not holding a valid and effective driving licence on the date of the accident.

5. The following issues were framed by the learned Tribunal:-

“1. Whether Maya Devi died in a motor vehicular accident

caused on 27.08.2004 with Bus No.CH-01-G/5836 driven by respondent No.2 as alleged? OPP

2. Whether the claimants are the legal heirs of deceased Maya Devi? OPP
3. If issues No.1 and 2 are proved to what amount of compensation the claimants are entitled to end from which of the respondents? OPP
4. Whether respondent No.2 was not holding a valid driving licence? OPR-3
5. Relief.”

6. An eye witness appearing for the claimants, PW2, (described in the Award only as one Kumar), supported the version of the claimants, stating that he was present at the bus-stop of Chandi Mandir alongwith one Roop Singh, waiting for a bus to go to Panchkula, when the “offending vehicle” came at a fast speed from the side of Pinjore. However, when the deceased was alighting from the bus, the driver started the bus, resulting in the deceased falling down and receiving serious injuries.

On the other hand, respondent No.2 appeared as his own witness and testified in terms of the written statement filed by respondent No.1, further stating that when he was over-taking another vehicle, a truck came from the opposite side. On seeing it, he had slowed down the speed of his bus and during that process, the deceased jumped from the bus and he had actually brought her to the PGI, Chandigarh.

7. Since the claim petition had been filed under Section 163-A of the Act, the learned Tribunal held that proof of negligence of the driver of the vehicle was not required to be established, when the deceased was admittedly travelling in the bus and had suffered injuries while alighting from it and she eventually had died of those injuries. Hence, it was held that

the respondents were liable to pay compensation and that the claimants, being the husband and sons of Maya Devi, were all entitled to receive it.

8. As regards medical expenses incurred, appellant-claimant No.1, husband of the deceased, tendered his affidavit, Ex.P1, stating that he had spent Rs.80,000/- on the medical treatment and funeral expenses of the deceased, who had died at the PGIMER, Chandigarh, at the age of 53 years. Her age was proved by it having been so recorded in the post mortem report.

However, the actual medical expenses incurred, as per bills produced, were seen to be only Rs.5303/- and consequently, the aforesaid amount was awarded by the Tribunal under that head.

9. Before the Tribunal, the claimants had cited the judgment of the hon'ble Supreme Court in **Lata Wadhwa and others v. State of Bihar and others, (AIR 2001 SC 3218)**, wherein while adjudicating on a writ petition filed in relation to a fire incident resulting in many unfortunate deaths, in a function organized by the Tata Iron & Steel Company Limited, Jamshedpur, it was held by their Lordships that in the case of a deceased housewife, a minimum income of Rs.3000/- per month should be ascribed, if the deceased housewife was in the age group of 34 to 59 years, and an appropriate multiplier thereafter applied.

The claimants had also cited a judgment of this Court in **Municipal Corporation, Chandigarh v. Ratti Ram and others** (FAO No.3669 of 2005, decided on 18.08.2005), in which, in the case of a deceased housewife of 50 years, Rs.2,88,000/- had been awarded by way of compensation.

10. The learned Tribunal, even while referring to these judgments, however, eventually relied upon the 2nd Schedule to the Act, to assess the

income of the deceased, wherein in clause 6(b), it is stipulated that the notional income in the case of a (deceased) non-earning spouse, should be taken to be 1/3rd of the income of the earning/surviving spouse.

However, in the absence of any proof of income of the first claimant (appellant No.1 herein), i.e. the surviving spouse, the Tribunal, on pure conjecture, held that he being a resident of a village in District Solan (HP), cannot be said to be earning more than Rs.45,000/- per annum. Consequently, 1/3rd of that income was taken to be the notional income of the deceased housewife, Maya Devi. To the aforesaid income, a multiplier of 11 was applied, in terms of the said 2nd Schedule, the deceaseds' age being 53 years, and consequently, the compensation under the head of loss of income was calculated to be Rs.1,65,000/-.

Rs.10,000/- was awarded by way of funeral expenses, loss of estate and loss of consortium, to the first appellant.

Thus, a total compensation of Rs.1,80,300/- was awarded, also taking into account the actual medical expenses proved to have been incurred.

Appellant No.1 was given the maximum apportionment of Rs.72,300/-, and the three major children of the deceased were all awarded Rs.36,000/- each. (The apportionment not being under challenge, the aforesaid is only being stated here for the record).

6% interest, per annum, was also awarded by the Tribunal, running from the date of the institution of the claim petition, till the date of actual payment to the claimants.

11. The driving licence of respondent No.2 not having been proved to be fake or invalid, the respondents were held jointly and severally liable to

pay the compensation.

12. Before this Court, Mr. Ashwani Arora, learned counsel for the appellants, submitted that other than the fact that the compensation awarded for the loss of consortium is highly inadequate, and that no amount has been awarded to the children of the deceased for the loss of love and affection of their mother, even the monthly income of the deceased, assessed at Rs.15,000/- per annum, was highly inadequate, as per the minimum wage notified by the State of Haryana in the year 2004, which was Rs.2600/-.

He further submitted that in *Lata Wadhwas'* case (supra), the fire incident had taken place on 03.03.1989, but even so, the hon'ble Supreme Court had held that Rs.3000/- per month should be the minimum income attributed to a housewife, who renders multifarious services to the entire family.

Learned counsel further referred to another judgment of the Supreme Court in **R.K.Malik & Anr. v. Kiran Pal & Ors., (2009) 14 SCC 1**, wherein, while adjudicating upon the appeal of the claimants who had initially filed a petition under Section 163-A of the Act, in respect of the unfortunate death of 29 children who died after their school bus plunged into the Yamuna river, it was held that non-pecuniary damages, as also loss of future prospects of income, need to be awarded by the Tribunal, even departing from the 2nd Schedule.

Mr. Arora further referred to another judgment of the Supreme Court in **Arun Kumar Agrawal and another v. National Insurance Company and others**, (AIR 2010 SC 3426), in which again, while both the hon'ble Judges eventually held that Rs.6,00,000/- was just and proper compensation in the case of the death of a housewife, it was observed by one

of the hon'ble members of the Bench, that the contribution by a home maker cannot be undermined and should not be pegged down to 1/3rd the income of the earning spouse.

In that case, the monthly income of the living spouse was Rs.15,416/- and consequently, the income of the deceased was assessed at Rs.5000/- per month, or Rs.60,000/- per annum, from which Rs.20,000/- (1/3rd) was deducted towards her personal expenses. Upon applying a multiplier of 15, though the loss of dependency came to Rs.6,00,000/-, the Tribunal had reduced it to Rs.2,50,000/- on the ground that it was too much compensation because the deceased was not actually an earning individual member.

As already said, the Supreme Court eventually upheld the amount of Rs.6,00,000/- calculated, as the compensation to be awarded.

13. Learned counsel next referred to a judgment of a co-ordinate Bench of this Court, in FAO No.218 of 2014, decided on 15.01.2014, in which case the accident in question had taken place on 23.11.2012 and the Tribunal had fixed the notional income of the deceased housewife to be Rs.9000/- per month. That was upheld by this Court, on the ground that if the notional income was taken to be Rs.3000/- per month in *Lata Wadhwas'* case (supra), for an incident that took place in 1989 (erroneously recorded as 1981 in the judgment of this Court), then Rs.9000/- had not been excessively assessed by the Tribunal, in respect of an accident that took place in 2012.

Similarly, in the judgment cited before the Tribunal, also of a co-ordinate Bench, in FAO No.3669 of 2005, where the accident took place on 09.01.2003, the amount of Rs.3000/- per month assessed by the Tribunal as income of the deceased housewife, was accepted by this Court. Other

judgments of co-ordinate Benches, in which incomes of Rs.3000/- to Rs.5000/- per month, were accepted by this Court, in the case of housewives, have also been cited by the learned counsel for the appellants.

14. Mr. Anoop Kumar Yadav and Ms. Madhu Sharma, learned counsel for respondents No.1 and 3 respectively, however, submitted that the claim petition having been filed under Section 163-A of the Act, the Tribunal was wholly correct in assessing the income as per the parameters laid down in the 2nd Schedule thereto, which is wholly in reference to Section 163-A of the Act.

They, therefore, prayed for dismissal of the appeal.

15. Having heard learned counsel for the parties and having considered the impugned Award of the learned Tribunal, the law discussed by their Lordships of the Supreme Court first needs to be looked at, alongwith the provisions of Section 163-A of the Act.

The said provision reads as follows:-

S.163-A “Special provisions as to payment of compensation on structured formula basis.—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or

establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) *The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”*

Thus, it is seen that the provision is a special provision which starts with a non-obstante clause to the effect that whatever is contained in the provision, would be *de hors* anything contained in any other law. This is obviously for the reason that payment of compensation, under this provision, is to be made to the victim/family of the victim of a motor vehicle accident, regardless of any determination of negligence by which the accident was caused. Thus, liability to pay compensation, by the person with whose vehicle the accident occurred, is wholly independent of the negligence of the owner or driver of the vehicle in question.

Hence, what is contained in the second schedule to the Act, otherwise would not be departed from, till a provision is made in that regard by amendment of the schedule, by the Central Government (as per Section 163-A (3) of the Act).

Despite that, since no amendment, whatsoever, has been made ever since the schedule was inserted in the Act in 1994, at least some part of the inflation which has taken place since then, up-till the date of accident in question, in any motor accidents claims case, would need to be looked at by a Tribunal and a Court.

16. Having looked at the bare provision, the judgments of the Supreme Court, as have been cited by learned counsel for the appellants, need to be referred to.

In *Arun Kumar Agrawals'* case (supra), one of the hon'ble Judges had held the limitation of income stipulated in the schedule, of a non-earning spouse (usually a housewife), to be discriminatory on the ground of equality, and had recommended that a suitable amendment be made in the Motor Vehicles Act. The other hon'ble member of the Bench had also referred to the invaluable services of a housewife and eventually, the ratio of the judgment of the Court was, that it would be reasonable to rely upon the criteria specified in clause 6 of the 2nd schedule and thereafter to apply an appropriate multiplier, further keeping in mind the judgments in **State of Kerala SRTC v. Susamma Thomas**, (1994) 2 SCC 176, **UPSRTC v. Tirlok Chandra**, (1996) 4 SCC 362, **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121 and *Lata Wadhwas'* case (supra). (Reference paragraph 32 of the aforesaid judgment in Agrawals' case).

The reference to *Susamma Thomas*, by the Supreme Court, in *Agrawals'* case, was in relation to the multiplier to be applied. The reference to *Tirlok Chandras'* case was also in reference to the multiplier and the defects in the 2nd Schedule, by way of obvious arithmetic miscalculations.

The reference to *Sarla Vermas'* case, was in relation to the entire gamut of assessment of just compensation, under different heads.

Eventually, as already noticed, their Lordships, (in *Agrawals'* case), upheld the calculation initially made by the Tribunal, by assessing the income of the deceased to be 1/3rd of that of her spouse. The deceaseds' income was taken to be Rs.5000/- per month, to which the appropriate multiplier (15 in that case), was applied, as per the age of the deceased, and a compensation of Rs.6,00,000/- was calculated and awarded by the Apex

Court.

17. Though the claim petition in *Agrawals'* case had been filed under Section 166 of the Act, whereas in the present case, it had been filed under Section 163-A, however, the conclusion arrived at by their Lordships, was after discussing the entire law on the subject, including the provisions of Section 163-A.

Yet, it cannot be lost sight of by this Court, that in the present case, the negligence of respondent No.2 was never established, or even gone into, by the Tribunal, in view of the fact that the claim petition was filed under Section 163-A and as such, whether it was the version given by respondent No.2, attributing the entire negligence on the deceased herself, or it was the version given by the claimants, foisting the entire negligence upon respondent No.2, that was the correct version, was never established.

Further, it has been held by the hon'ble Supreme Court in **Oriental Insurance Co. Ltd. v. Dhanbai Kanji Gadvi and others, (AIR 2011 SC 1138)**, that it is for the claimant to decide as to whether he wishes to pursue his claim under Section 166 of the Act, or under Section 163-A thereof. Thus, if he chose to raise the claim under the latter provision, he cannot claim the benefits of “unlimited” compensation that may be claimed in the case of a petition filed under Section 166.

In the present case, the ratio of that judgment would be especially applicable, in view of the two wholly different versions of the accident, given by the claimants and respondents, neither of which was established to be correct or erroneous, it being a petition under Section 163-A.

Hence, in the opinion of this Court, deviation from the 2nd

schedule can only be to the extent of factoring in the inflationary costs that would obviously be added to the monetary figures given in the schedule, those figures being existent as they were, since 1994.

Presently, however, the monetary figure, i.e. the income of the deceased, assessed as 1/3rd of her husbands' 'conjectured income, is not an exact figure taken from the schedule. In other words, the conjectured income of Rs.45,000/- per annum, 'attributed' to the husband of the deceased, by the Tribunal, (appellant No.1 herein), was not on the basis of any parameters given in the 2nd schedule of the Act, but wholly as per the assessment of the Tribunal.

18. That having been said, I agree with learned counsel for the appellants that the Tribunal wholly erred in pegging down the income of the deceased to Rs.15,000/- per annum (about Rs. 1,200/- per month in the year 2004).

Though it is not clear as to how the Tribunal came to a conclusion that appellant No.1 belongs to a village in Distirct Solan (HP), with the address of all the claimants shown to be in village Tipra, P.O. Surajpur, District Panchkula (Haryana), possibly it was so held by the Tribunal upon a question put to appellant-claimant No.1.

Be that as it may, the address of the appellants, given to be of Haryana, the minimum wages notified by that State in the year 2004, would definitely need to be taken to be the minimum wages of even a housewife, in the opinion of this Court. Though, keeping in view the fact that an unskilled worker is paid for his work of 8 hours a day, by his employer, whereas a housewife works around the clock, with no monetary remuneration, the contention of learned counsel with regard to the minimum wages of a

housewife, as assessed by their Lordships in *Lata Wadhwas'* case (supra), is obviously not without merit.

Yet, to repeat, the claim petition in this case was filed under Section 163-A, on the principle of a 'no fault liability'. If one were to examine the issue from the angle that had the contention of the respondents been accepted, i.e. that the accident occurred due to deceased's' own fault, obviously no compensation at all would be payable to her. However, since Section 163-A is a provision by which liability to pay compensation is not assessed on the basis of any negligence, the spirit of the provision has to be adhered to, and thereafter, inflationary trends factored in, to the extent possible.

The correct method to assess the income of a deceased, in a claim petition filed under Section 163-A of the Act would, in the opinion of this Court, be in terms of the notified wages applicable on the date of the accident. Thus, whether the deceased was a housewife or a person working outside the home, the notified minimum wages applicable in a particular State, would obviously be keeping up with inflationary trends, and as such, without discrimination between a homemaker and a person working outside the home, such minimum wages can be taken to be the income of the deceased person.

19. The revised notified minimum wages w.e.f. 01.07.2004, in the State of Haryana are seen to be Rs. 2,269.45/-, for an unskilled labourer as per the chart maintained by this Court, of the notified monthly wages. That figure is rounded off to Rs.2270/- per month, for convenience.

Consequently, the said amount is taken to be the income of the deceased in this case, i.e. Maya Devi, as on the date of her death

(02.09.2004), in terms of Clause 6 of the Second Schedule to the Act.

20. Having assessed the income as above, the deceased being 53 years of age, the multiplier to be applied in terms of *Sarla Verma's* case (supra) is 11, which was correctly applied by the Tribunal, though to a much lesser income.

Consequently, taking the income of the deceased housewife to be Rs.2,270/- per month in the year 2004, the annual income works out to Rs.27,240/-, to which a multiplier of 11 is applied, thereby arriving at a sum of Rs.2,99,640/-, as loss of income to the appellants-claimants.

21. It may be stated here that, deliberately, no loss of future prospects of income are being even looked at by this Court in the present case, not just for the reason that that issue is pending before a larger Bench of the Supreme Court, with regard to cases where the deceased was not earning a permanent income, but also because of the fact that the claim petition was filed under Section 163-A of the Act and not under Section 166 thereof and hence, no loss of future prospects of income can be awarded in any case.

22. The loss of income having thus been assessed as above, as regards grant of higher compensation towards loss of consortium to appellant No.1 and loss of love and affection etc. to appellants No.2 to 4, I do not agree with the contention of learned counsel again for the same reason, that the claim petition was not filed under Section 166 of the Act.

Therefore, the Tribunal already having awarded an amount of Rs.10,000/- which is marginally more than what could have been awarded as per clause 3(i), (ii) and (iii) of the 2nd schedule to the Act, (i.e. Rs.9,500/-), I see no ground to grant any higher compensation under those heads, in respect

of a petition filed under Section 163-A.

(The Tribunal had awarded a sum of Rs.10,000/- on account of funeral expenses, loss of estate and loss of consortium to claimant No.1, whereas under these three heads, given in clause 3 aforesaid, the total amount awardable is Rs.9500/- (Rs.2000/- for funeral expenses, Rs.5000/- towards loss of consortium and Rs.2500/- for loss of estate)).

23. It must be added here that though, even contrary to what this Court has observed hereinabove, that inflation must be factored into the figures given in the 2nd schedule to the Act, it having been added to the Act in 1994 with no change of monetary figures thereafter, however, in the present case, since the quantum of compensation has already been increased under the head of loss of income and the Tribunal has already awarded at least marginally more than what is stipulated in the Schedule under other heads, the compensation granted under such other heads is being kept intact.

Of course, as regards medical expenses actually incurred, the amount of Rs.5,300/- awarded by the Tribunal was on the basis of bills produced by way of evidence, which in any case does not require any interference with.

24. Consequently, as a result of the aforesaid discussion, the following compensation is now awarded to the appellants:-

- i) For loss of income : Rs.2,99,600/-
- ii) Towards loss of consortium,
funeral expenses and loss of estate : Rs.10,000/-
(as awarded by the Tribunal)
- iii) Towards medical expenses : Rs.5300/-
(as awarded by the Tribunal)

Total : Rs.3,14,900/-

Thus, the enhanced amount now awarded by this Court is Rs.1,34,600/- over and above what was awarded by the Tribunal.

The enhanced amount would also carry the same rate of interest as was awarded by the Tribunal, i.e. 6% per annum, running from the date of institution of the claim petition, i.e. 08.09.2000, till the date of realization of the enhanced amount.

The three respondents would be jointly and severally responsible for paying enhanced compensation, which would be equally divided amongst all four appellants, i.e. they would be each be paid Rs.33,660/- each, plus the interest accruing thereupon.

25. The appeal is accordingly partly allowed to the above extent, with no order as to costs.

July 5, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE