IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

FAO No.5537 of 2006
Date of decision: 08.01.2016

Sube Singh and others

... Appellants

Versus

Yamin and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vikas Kumar, Advocate, for the appellants.

Mr. D.P.Gupta, Advocate, for respondent No.3.

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AMOL RATTAN SINGH, J.

By this appeal, the four appellants seek enhancement of the compensation of Rs.2,34,900/- awarded by the learned Motor Accident Claims Tribunal, Faridabad, vide its Award dated 23.08.2006.

2. The facts leading up to the filing of the claim petition are that on 19.11.2002, respondent No.2 (shown in the memo of parties as two different persons with the same name and parentage, though actually stated to be the same person), was driving his truck bearing registration No.HR-

38-8482, in the area of Police Station, City, Palwal. Karamvir and Wazir Singh (the latter being the son of appellants No.1 and 2 and father of appellants No.3 and 4) were riding on a scooter bearing registration No.DDZ-3734, 'driven' by Karamvir. When the scooter reached near Naya Gaon, the aforesaid truck (hereinafter to be referred to as 'the truck'), allegedly driven in a rash and negligent manner by respondent No.1, came and hit the scooter, head on. Wazir Singh is stated to have died on the spot whereas Karamvir sustained multiple injuries and was admitted to the Civil Hospital at Palwal. He is stated to have eventually recovered from his injuries. This appeal, being only in respect of the claim filed by the heirs of Wazir Singh, nothing further need be stated with regard to Karamvir, who had filed a separate claim petition before the learned Tribunal, which was also decided vide the same Award as is presently subject to this appeal. However, no appeal by Karamvir is before this Court.

Respondent No.1 is stated to have fled away from the spot, with his truck. One Om Parkash, brother-in-law of Karamvir, is stated to have witnessed the accident, as he was travelling in a car, behind the scooter being ridden Karamvir and Wazir Singh. An FIR bearing No.1036 dated 20.11.2002, is stated to have been lodged at the instance of the said Om Parkash.

3. In the claim petition, it was claimed that Wazir Singh was an agriculturist and milk vendor, 35 years of age, with an income of Rs.8000/- per month. His parents and children were all dependent upon him.

The respondent Insurance Company (presently arrayed as respondent No.3) filed a reply taking the usual preliminary objections regarding no locus, incomplete particulars, collusion of parties and misjoinder etc. On merits also, the claim petition was opposed.

4. The learned Tribunal, in the light of evidence led before it, held respondent No.1, who had been proceeded against *ex parte,* to be guilty of negligence and went on to assess the compensation, taking the income of the deceased to be Rs.2400/- per month, in the absence of any evidence led to show that it was actually Rs.8000/- per month. Consequently, the compensation was assessed as follows:-

Dependent income by applying a 1/3rd cut towards personal expenses of the deceased	:	Rs.1600/- per month
Multiplier	:	12
Total loss of income to the claimants	:	Rs.2,30,400/-
Funeral expenses	:	Rs.2000/
Loss of estate	:	Rs.2500/-
Total	**:**	**Rs.2,34,900/-**

Interest @ 7.5% per annum, from the date of filing of the petition till the date of realization of the compensation amount, was also awarded.

No appeal having been filed by the respondents, against the finding of negligence and fastening of liability by the Tribunal, the only issue to be considered by this Court, is as to whether the compensation awarded to the appellants, was adequate or not.

5. Mr. Vikas Kumar, learned counsel appearing for the appellants, at the outset submitted that the wife of Wazir Singh had already pre-deceased him and as such, was not a petitioner before the Tribunal.

As regards the compensation awarded, he submitted that Rs.2400/- per month was a highly inadequate amount to be awarded to an agriculturist who was also a milk vender and therefore, the income of the deceased was wholly erroneously assessed.

Further, he submitted that the deceased being only 35 years of age, a multiplier of 16 should have been applied as laid down by the hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and others**, (2009) 6 SCC 121**.**

Learned counsel submitted that the Tribunal also erred in not awarding loss of prospective income of the deceased and the dependency thereof, to the appellants. In this regard, he cited the judgments of **Rajesh and others v. Rajbir Singh and others,** (2013) 9 SCC 54 and **Vimal Kanwar and others v. Kishore Dan and others,** (2013) 7 SCC 476.

Next, he again submitted that funeral expenses should have been awarded at least of an amount of Rs.25,000/-, as per the ratio of the judgment in *Rajesh and others v. Rajbir Singh and others* (supra).

6. Learned counsel next contended that the loss of estate of Rs.2500/- was wholly and completely inadequate, inasmuch as, no compensation for loss of love and affection of their son has been awarded to appellants No.1 and 2 and even more importantly, no compensation for loss of love and affection, care and guidance, has been awarded to respondents No.3 and 4 who were only 11 and 9 years old respectively, at the time of death of their father, their mother already having died earlier.

Towards compensation under this head also, he cited the aforesaid judgments of *Rajesh and others v. Rajbir Singh and others* and *Vimal Kanwar and others v. Kishore Dan and others* (supra). In *Rajeshs'* judgment, the Supreme Court had awarded Rs.1,00,000/- for loss of care and guidance to two minor children, whereas in *Vimal Kanwars' case,* it had awarded Rs.2,00,000/- to the daughter, by way of loss of love and affection of her father.

He, therefore, submitted that at least a total of Rs.10,00,000/- by way of compensation, as had been prayed for in the claim petition, should have been awarded by the Tribunal.

7. It needs to be noted that despite service, nobody appeared on behalf of respondent No.1/2 and as such, he, by this order itself, is being proceeded against *ex parte.* In any case, the contesting respondent is the Insurance Company (respondent No.3), with whom the offending truck was admittedly insured.

8. Mr. D.P.Gupta, learned counsel appearing for the respondent Insurance Company, submitted that the compensation already awarded by the Tribunal is wholly adequate and this Court would not apply the ratio of the judgments in *Rajesh and others v. Rajbir Singh and others* and *Vimal Kanwar* (supra), in view of the fact that the accident is of the year 2002 and awarding compensation to the tune of Rs.1,00,000/- each to the children of the deceased for loss of love and affection and also future prospects, in the light of the said judgments, would be highly excessive, keeping in view the fact that almost 10 years have gone by since the filing of this appeal and 13 years have gone by since the death of Wazir Singh, in lieu of which compensation is being claimed.

9. Having considered the arguments, I am not inclined to agree with the arguments of learned counsel for the respondent, for various reasons, the first of which is that a 35 year old man died due to the negligence of respondent No.1 and the liability to try and compensate his family for that loss, has to be borne by the said respondent, or, vicariously, by the insurer of the vehicle that he was driving. He left behind two very

young, already motherless children, who would now obviously have to be looked after by the grandparents, i.e. appellants No.1 and 2. Therefore, loss of love and affection to the children, as well as to the parents of the deceased, needs to be compensated to the extent possible, in the opinion of this Court.

The children have also loss the care and guidance of their father, at an extremely young age, which obviously is a factor that this Court will not ignore.

10. Further, even accepting, in the absence of any other evidence led to the contrary, that the income of the deceased was only Rs.2400/-, even though the same is vehemently opposed by the counsel for the appellants, it would be highly unjust, in my opinion, if the prospect of the future earnings that a 35 year old man would have earned, are also denied to his parents and children.

Hence, the argument raised by learned counsel for the respondent No.3 is rejected.

11. Coming therefore to the compensation to be awarded to the appellants. The income assessed by the Tribunal, in the absence of any evidence led with regard thereto, is obviously that which is the minimum that a labourer would have earned in the year 2002 (@ Rs.80/- per day). Learned counsel for the appellants submitted that it is not possible that an agriculturist who was also selling milk from his buffaloes and cows, would earn only Rs.2400/- per month. However, as no evidence, whatsoever, was led before the Tribunal and none is forthcoming even now by way of any additional evidence, I find no ground on which to interfere with that finding of the Tribunal. Thus, the income of the deceased has to be assessed at

Rs.2400/-.

12. To the income of Rs.2400/- per month, of the deceased, 50% loss of prospective earnings are to be added, considering that he was only 35 years of age, leaving behind a family of four persons. Undoubtedly, even the daily rate of earnings of a labourer, increase year to year factoring in inflation and the like. Hence, the ratio of the judgments of the Supreme Court, in regard thereto, is based on that reasoning that had a deceased person remained alive, he would have, in normal circumstances, increased his earnings from year to year, at least up to a certain age. Thus, in the case of a person who is taken to be earning only daily wages, his earnings would increase even with increasing age, at least till the age of 50 to 55 years, simply factoring in inflation from year to year. In the case of a 35 year old man, his energy to do work would not decrease till about the age of 45 years at least, especially when he knew that he had young children and old parents to feed. Therefore, the argument of learned counsel for the Insurance Company, that the claim petition being of the year 2002, it is not logical to grant compensation for loss of prospective income, is an argument without any basis, because firstly, compensation that should have been paid in the year 2002 itself, cannot be denied simply because it was not granted/paid at that time. Secondly, the ratio of a judgment applies retrospectively, the law being held to be always applicable as interpreted by the judgment, unless it is specifically ordered to operate prospectively.

The ratio of the law laid down in the aforesaid judgments referred to, being based on the rationale already discussed, it cannot be held to be prospective only, in any case. It may also be noticed that the claim of the families of the deceased in those two cases, was also relating to motor accidents which took place in the years 2007 (in Rajeshs' case) and 1996 (in Vimal Kanwars' case). Hence, awarding compensation for loss of the prospective increase in the income of the deceased, even in the present case, cannot be denied to the parents and children of the deceased, simply due to passage of time. Further, just because this appeal has been pending for almost 10 years in this Court, that cannot be a ground to deny the benefit of what is rightfully due to the appellants.

Thus, factually the said loss of prospective monthly income of the deceased is assessed at Rs.3600/- (Rs.2400/- + 50% thereof = Rs.1200/-).

13. Considering his meager income and the fact that he had four other mouths to feed, the ratio of *Sarla Vermas' case* (supra), as regards deduction towards personal expenses, needs to be applied, and consequently, instead of the 1/3rd deduction made by the Tribunal, a 1/4th deduction is now made to the total loss of income (actual and prospective) of the deceased, by which the loss of monthly income to the appellants would work out to be Rs.2700/-. The annual loss of income to them would thus be Rs.32,400/-, to which a multiplier of 16 is to be applied, in terms of the ratio of the said judgment, the deceased being only 35 years of age. Thus applied, the total loss of income to the appellants works out to Rs.5,18,400/-.

14. Though funeral expenses of Rs.25000/- do seem to be a little excessive, however, in view of the ratio of the judgments in *Rajesh and others v. Rajbir Singh and others* and *Vimal Kanwar and others v. Kishore Dan and others* (supra), also again keeping in mind the fact that the children have been completely orphaned and the financial responsibility of looking

after them fell upon the grand-parents, the said amount of Rs.25,000/- is awarded under this head.

15. For loss of love and affection of their son, Rs.50,000/- each is awarded to appellants No.1 and 2; and even though Rs.1,00,000/- each is, in my opinion, wholly inadequate compensation to two completely orphaned children, the said sum (Rs.1,00,000/- each) is awarded to respondents No.3 and 4 for the loss of love and affection, care and guidance, of their father, whom they lost when they were only 11 and 9 years old, respectively.

16. The total compensation now awarded, would therefore amount to Rs.8,43,400/-. The enhanced amount of Rs.6,08,500/- would carry the same rate of interest as was awarded by the Tribunal, i.e. 7.5% per annum, payable from the date of filing of the claim petition before the Tribunal, till the date that the amount is paid to the appellants.

The appeal is, consequently, partly allowed, as above, with no order as to costs.

08.01.2016 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**