398 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-145-2008
DATE OF DECISION: 03.06.2016

BASKARI AND OTHERS …. Appellants

VS.

SURESH KUMAR AND OTHERS …. Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. P.R. Yadav, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent No.3.

Mr. Vipul Sharma, Advocate
for Mr. Paul S. Saini, Advocate
for respondent No.6.

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1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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LISA GILL, J. (ORAL)

This appeal has been preferred by the claimant-appellants claiming enhancement of the compensation awarded by learned MACT, Gurgaon vide award dated 26.11.2005.

There is no dispute that the deceased-Shabudin, the husband of appellant No.1 and the father of appellants No.2 to 6, lost his life in an accident which occurred on 18.03.2002 while travelling in a vehicle bearing registration No.RJ02-G-4160 from Azadpur Mandi, Delhi to Ferozepur Jhirka. It is conclusively held by the learned Tribunal that the accident in question took place due to the contributory negligence of vehicle in which the deceased was travelling as well as the rash and negligent driving of a dumper bearing registration No.HR-38-D-5461 by Suresh Kumar, respondent No.1.

Respondent No.6-The New India Assurance Company, the insurer of vehicle No.RJ-02-G-4160 in which the deceased was travelling has been held liable to pay 25% of the compensation and Oriental Insurance Company, insurer of vehicle No.HR-38-D-5461 to pay 75% of the same. This finding is stated to have attained finality. FAO No.1346 of 2006 preferred by respondent No.6, The New India Assurance Company Ltd., was dismissed by this Court on 25.03.2015 with liberty to the said Insurance Company to contest the appeal filed by the claimant-appellants.

Order dated 25.3.2015 in FAO No.1346 of 2006 reads as under:-

> "Learned counsel for the appellant has stated that the amount, as awarded by the Tribunal qua the share of appellant, has already been deposited and the same has been paid to the claimants, therefore, this appeal has become infructuous but the appellant-Insurance Company reserves its right to contest the case of the claimants for enhancement of compensation on merit.
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> In view of the statement of learned counsel for the appellant, the instant appeal has become infructuous and is dismissed as such, reserving the right of Insurance Company/appellant to contest the appeal of claimants for enhancement of compensation."

No cross-objections have been filed in the present appeal by any of the respondents.

The appellants preferred a petition under Section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act') claiming compensation to the tune of Rs.10 lac on account of death of Shabudin stated to be an agriculturist as well as commission agent earning Rs.10,000/- per month. All the respondents contested the claim and filed their written statements. Two other claim petitions were also preferred, one by Ali Mohammad, claiming compensation for injuries suffered by him and another by the legal representatives of Kamruddin (deceased), respectively. All the three petitions were consolidated and were decided by the common impugned award dated 26.11.2005. The learned Tribunal on the basis of the pleadings of the parties framed the following issues:-

> "1. Whether the accident in question took place due to the rash and negligent driving of respondents Nos.1 and 4, namely Suresh Kumar and Mubin, while driving their vehicles bearing No.HR-38-D/5461 and RJ-02-G/4160 respectively at the relevant date and time, as alleged in the petitions? OPP
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> 2. If issue No.1 is proved, whether Ali Mohd. Petitioner sustained injuries and Shabudeen and Kamruddin died on account of injuries received in the accident in question, as alleged? OPP
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> 3. If issues Nos.1 and 2 are proved, whether the petitioners are entitled to get compensation. If so, to what amount and from whom? OPP

4. Whether respondents nos.1 and 4 had no valid and effective driving licence to drive their respective vehicles. OPR-3 & 6.

5. Whether respondents nos. 1 and 2 had contravened the terms and conditions of insurance policy of vehicle No.HR-38-D/5461 and respondents nos.4 and 5 had contravened the terms and conditions of insurance policy of vehicle No.RJ-02-G/4160, as alleged. If so, its effect? OPR-3 & 6.

6. Whether the petitioners have no locus standi and cause of action to file the petitions? OPR.

7. Relief."

The present appeal has been filed by the legal representatives of Shabudin who had preferred MACT petition No.194/23.8.2002.

The learned Tribunal on considering the evidence on record and the facts & circumstances of the case while deciding issue No.1 held that the accident in question took place due to the negligence of the driver of the dumper as well as that of the four wheeler in the ratio of 75 : 25 respectively. This finding has attained finality as mentioned above. FAO No.1346 of 2006 preferred by New India Assurance Company Limited i.e. the insurer of vehicle No. RJ-02-G-4160 in which the insured were travelling, has been dismissed on 25.03.2015 with the right of the Insurance Company to contest the claim for enhancement of compensation remaining intact.

The learned Tribunal taking into consideration the entire facts and circumstances of the case awarded a total sum of Rs.2,83,800/- to the present appellants taking the income of the deceased Shabudin to be Rs.2100/- per month. The age of the deceased was 28 years as per the post mortem report (Ex.P1). Multiplier of 16 has been applied and loss of dependency calculated as Rs.2,68,800/-. A sum of Rs.5,000/- was allowed on account of loss of consortium and Rs.10,000/- for transportation and funeral expenses.

Learned counsel for the appellants prays for enhancement of the compensation and submits that loss of income on account of future prospects should also be awarded. Deduction of 1/3rd has been wrongly made by the learned Tribunal keeping in view the number of defendants and no amount has been awarded on account of loss of love and affection, loss of estate. The widow is entitled to an enhancement on account of loss of consortium. It is thus prayed that compensation awarded to appellant be enhanced.

Learned counsel for the respondents while refuting the above-said arguments, prays for the award to be upheld as no ground for further enhancement in the compensation awarded is made out. It is further submitted that the deceased not being in government service is not entitled to any compensation on account of loss of future prospects. The matter is pending before the Hon'ble Supreme Court in SLP CC No.8058 of 2014 National Insurance Company Ltd. Vs. Pushpa and others. Thus it is submitted that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the available record.

Keeping in view the authoritative guidelines laid down by the Hon'ble Supreme Court, compensation awarded to the appellants is required to be re-worked. There is no evidence on record which would justify assessment of the income of the deceased to be more than Rs.2100/- per month as rightly assessed by the learned Tribunal. There is no dispute regarding the age of the appellants being 28 years at the time of death. Deduction on account of personal expenses has to be 1/4th instead of 1/3rd keeping in view the number of claimants i.e. one widow and five children. Multiplier of 17 has to be applied instead of 16.

Though learned counsel for the respondents have raised the issue of the claimants not being entitled to any compensation on account of loss of future prospects not being in public service, it is not denied that the Hon'ble Supreme Court in subsequent judgments in **Munna Lal Jain's case (supra)** as well as **Shashikala and others Vs. Gangalakshmamma and another 2015 (9) SCC 150**, has awarded compensation on account of loss of future prospects to self-employed/privately employed persons. Income of the deceased is thus assessed as Rs.3150/- after affording an addition of 50% (Rs.2100+Rs.1050).

In view of the authoritative decisions of the Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77, Rajesh and others vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170 (SC), Munna Lal Jain Vs. Vipin Kumar Sharma, (2015) 6 SCC 347**, a deduction of 1/4th on account of personal expenses has to be applied. Income is thus worked out at Rs.2362 (Rs.3150/- - Rs.788/-) per month or Rs.28,344/- per annum. After applying multiplier of 17, loss of dependency works out to be Rs.4,81,848 (Rs.28,344 x 17).

The appellant-widow is entitled to a sum of Rs.1 lac on account of loss of consortium, Rs.1 lac on account of loss of estate. There are five minor children of the deceased. In my considered opinion, it would be appropriate to award a sum of Rs.25,000/- each for loss of love and affection. A sum of Rs.25,000/- is awarded towards funeral expenses.

Appellants-claimants are, thus, entitled to enhanced compensation as under:-

Sr. No.	**Heads of Claim**	**Amount**
1	Loss of Dependency (Rs.2363/- x 12 x 17)	Rs.4,81,848/-
2	Loss of consortium to the wife	Rs.1,00,000/-
3	Loss of estate	Rs.1,00,000/-
4	Loss of love and affection each to five minor children (Rs.25,000/- x 5)	Rs.1,25,000/-
5	Funeral expenses	Rs.25,000/-
	TOTAL	**Rs.8,31,848/-**

The appellants shall be entitled to interest @ 6.5% on the enhanced amount from the date of filing of the petition till realization. The amount already paid shall obviously be adjusted accordingly.

With the above modification in the impugned award dated 26.11.2005 passed by Motor Accident Claims Tribunal, Gurgaon, this appeal is partly allowed.

(LISA GILL)
JUDGE

03.06.2016
SwarnjitS