

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1948 of 2008
Date of Decision : 04.02.2016

Kamla and others

....Appellants

Versus

Surender Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Kotla, Advocate
for the appellants.

None for respondent no. 2.

Mr. Ravinder Arora, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimants Kamla and others seeking enhancement of compensation awarded to them by the Motor Accident Claims Tribunal, Fatehabad (later referred to as 'the Tribunal') vide award dated 19.10.2007, for the death of Om Parkash, husband of claimant-appellant No. 1-Kamla and father of claimants-appellants no. 2 to 5, in a motor vehicle accident with Jeep bearing registration No. DL-4CC-3740 (later referred to as 'the offending vehicle').

2. Case of claimants, in brief, is that on 05.02.2004, Om Parkash was going to Nathusari Chopta from Bhattu in the offending vehicle. On the way, after reaching near Pilimandori minor on Bhattu Nathusari Chopta road, driver of the offending vehicle, namely; Surender Kumar-respondent no. 1 raised the speed of Jeep and lost control over the steering. The Jeep got overturned as a result of which Om Parkash and Chhotu Ram passengers in

that Jeep sustained multiple grievous injuries and died at the spot while other occupants of Jeep sustained injuries.

3. In reply filed by respondents no. 1 to 3 i.e. driver, owner and insurer of the offending vehicle, it was denied that the accident was caused by respondent no. 1 due to his rash and negligent driving of the offending vehicle.

4. On appraisal of evidence, the Tribunal concluded that the accident was caused due to rash and negligent driving of the offending vehicle by respondent no. 1.

5. While computing the amount of compensation payable for the death of Om Parkash, the Tribunal assessed his monthly income as ₹2500/- from which deduction of 1/3rd was made towards personal expenses of the deceased and on applying the multiplier of 10, amount of dependency was calculated as ₹1,99,920/- to which ₹2000/- was added towards funeral expenses and ₹5000/- towards loss of consortium for respondent no. 1 and total compensation of ₹2,06,920/- was allowed.

6. Learned counsel for the appellants has argued that the deceased was an agriculturist and was earning ₹5000/- per month. However, the Tribunal did not accept the plea of claimants as they could not produce any *jamabandi*, *khasra girdawari* in support of their contention. He has argued that the accident took place in the year 2004 and even if, income of the deceased is taken that of a daily wager, the same could be taken as ₹3500/- per month. The Tribunal has wrongly applied the multiplier of 10 while computing the amount of dependency instead of 13 as held by Hon'ble Supreme Court in the case of **Sarla Verma and ors. vs. Delhi**

Transport Corporation and another, (2009) 6 SCC 121. The deduction towards personal expenses has also been wrongly made as 1/3rd of his income instead of 1/4th of his income. The compensation allowed for the loss of consortium and funeral expenses are also on lower side and no compensation was allowed for the loss of love and affection, care and guidance for the children.

7. Learned counsel for respondent no. 3-Insurance Company has argued that in the absence of any documentary evidence regarding income of the deceased, the Tribunal has committed no error of law while assessing income of the deceased as ₹2500/- per month. Age of the deceased was mentioned as 50 years by claimants and in the postmortem report (Ex. P-2) age of the deceased was described as more than 50 years, as such, multiplier is to be taken as applicable to the victim in the age group of 51 to 55 years.

8. In the case of ***Sarla Verma (supra)***, the multiplier, as per the age group are discussed. Multiplier applicable to age group of 45 to 50 is 13.

9. It is clear from perusal of above observations that for the person of the age of 50, who had not reached the age of 51, the multiplier applicable is of the age group of 46 to 50 and not of 51 to 55, as such, the Tribunal has wrongly applied multiplier of 10 while calculating amount of dependency.

10. In view of the above facts and settled legal proposition regarding grant of compensation, I am of the opinion that compensation as allowed by the Tribunal requires modification and upward revision. In the case of **Minu Rout and another vs. Satya**

Pradyumna Mohapatra and others, 2013 (10) SCC 695 the accident had taken place on 08.11.2004 and the Apex Court held income of the deceased, who was a driver, as ₹6000/- per month, considering the job of a driver as skilled job. Applying the same norms with all moderations, I accept the submissions made by learned counsel for the appellants and assess income of the deceased as ₹3500/- per month. As per observations in the cases of **Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447** and **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54**, claimants are entitled to 15% addition in income of the deceased towards his future prospects. Claimants are also entitled to compensation of ₹1 lac towards loss of consortium for claimant-appellant no. 1 and ₹1 lac towards loss of love and affection, care and guidance for the children. The compensation amount of funeral expenses as allowed by the Tribunal is also enhanced to ₹25,000/-.

11. Taking the above factor into account, compensation to which claimants are entitled is tabulated as follows:-

Sr. No.	Heads	Calculation
(i)	Income of the deceased Om Parkash	₹3500 per month
(ii)	15% of (i) above to be added as future prospects	₹3500 + ₹525 = ₹4025 per month
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased	₹4025 - ₹1006 = ₹3150 per month
(iv)	Compensation after multiplier of 13 is applied	(₹3019X12X13) = ₹470964
(v)	Loss of consortium	₹100000
(vi)	Loss of estate, love and affection	₹100000
(vii)	Funeral expenses	₹25000
<i>Total</i>		₹695964

12. In view of my above discussion, the instant appeal has merits and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Om Parkash is enhanced from ₹2,06,920/- to ₹6,95,964/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization. Respondents no. 1 and 2 are held liable jointly and severally to pay the amount of compensation.

February 04, 2016

jk

**(SURINDER GUPTA)
JUDGE**

Whether to be referred to the Reporters? *Yes/No*