

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.4971 of 2008

Date of Decision.18.10.2016

Smt. Vidya Devi and others

.....Appellants

Vs

Rajpal and others

.....Respondents

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

Mr. Shashi Kumar Yadav, Advocate
for respondent No.3-insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appeal is for enhancement of compensation for a male aged 32 years, who died in a road accident which took place on 29.04.2003. The claimants were widow, three minor children and parents. On the fateful day of 29.04.2003, the deceased was heading towards his village by foot when a tractor bearing registration No.A/F coming from the opposite side ran over him, resulting into serious injuries. Initially, the deceased was got treated from a vaid in the village but later on, he was medico-legally examined on 2.5.2003 at General Hospital, Tohana from where he was referred to PGIMS, Rohtak. However, his relatives/attendants shifted him to Pahwa Hospital, Fatehabad, thereafter to Medical Centre, Chandigarh and subsequent thereto Preet Hospital, Tohana where ultimately he died on 16.09.2004. An FIR was lodged on 3.5.2003 at Police Station, Sadar Tohana in this regard.

The deceased was said to be running a grocery shop in the village and earning ₹10,000/-. While awarding the compensation, the

Tribunal took the income of the deceased as ₹3300/- in the absence of any documentary evidence that the deceased was earning ₹10,000/- per month. The Tribunal made a cut of ₹600/- towards personal expenses and assessed ₹2700/- as contribution to the family, applied a multiplier of 10 and awarded a compensation of ₹3,24,000/- in toto.

Mr. Sandeep Kotla, learned counsel appearing for the appellants submits that the Award passed by the Tribunal is grossly low as it assessed the income of the deceased at ₹3300/- whereas the labourers were used to earn ₹4500/- per month at that time. The Tribunal also did not provide for increase for future prospect, loss of love and affection, loss of consortium, funeral expenses, loss to estate and even multiplier of 10 is also lower side, thus, urges this Court for allowing the appeal by modifying the Award passed by the Tribunal.

Per contra, Mr. Shashi Kumar Yadav, learned counsel appearing for respondent No.3-insurance company submits that there is no scope for enhancement as the Award passed by the Tribunal is perfectly legal and justified.

I have heard learned counsel for the parties, appraised the paper book and of the view that amount of compensation is required to be enhanced as per the law laid down by the Hon'ble Supreme Court in Sarla Verma Vs. DTC (2009) 6 SCC 121 and Rajesh v. Rajbir Singh, (2013) 9 SCC 54. In the absence of any documentary proof, I will retain the income as assessed by the Tribunal i.e. ₹3300/- per month, make an increase of 50% towards future prospect, make a cut of 1/4th for personal expenses and apply a multiplier of 16 suitable to the age of the deceased to assess the loss of dependence at ₹7,12,800/-. I will provide ₹1 lac for loss of consortium,

₹50,000/- each for minor children for loss of love and affection, ₹25,000/- for funeral expenses and another sum of ₹10,000/- for loss to estate.

There is another aspect of the matter. It is not the case where the deceased died on the spot or succumbed to the injuries in hospital within few days. The accident took place on 29.04.2003 and the deceased took his last breath on 16.09.2004 i.e. he died after 16 months of the accident. PW-5, Dr. A.L. Bajaj had deposed that he along with other members of the medical board examined the deceased-Rajesh Kumar and he was found to be suffering from 100% disability on account of fracture of spine with paraplegia and bed sores. He had also testified that the patient suffering from such injuries can die with passage of time as a result of neurological complications or septicernia. From the evidence of PW5, it is clearly revealed that the deceased-Rajesh Kumar remained bed ridden for the aforementioned period i.e. from the date of accident till he died and for all this period, his family members would have spent money on his treatment, transportation from one hospital to another as he was shifted to many hospitals in different cities i.e. Tohana, Rohtak, Fatehabad, Chandigarh and again Tohana and he would have had required an attendant round the clock to take care of his daily needs, nature calls and to shift sides while sleeping/lying on the bed. In view of the peculiar circumstances as noticed above, I will also provide another sum of ₹1 lac for expenditure spent on treatment of the deceased for almost 16 months, transportation and attendant charges.

In all, the total compensation payable shall be ₹10,97,800/-.

The amount in excess over what has already been provided by the Tribunal shall also attract interest @9% from the date of petition till the date of

payment. By now, all the minor children have become major, so the amount over and above the amount assessed by the Tribunal, shall be distributed/paid to the claimants i.e. widow, three children and parents in the ratio of 2:2:2:2:1:1 respectively. The liability shall remain the same as assessed by the Tribunal i.e. respondent Nos.1 to 3 are liable to pay the compensation jointly and severally.

The Award passed by the Tribunal is modified and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

October 18, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes