IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.329 of 2009
Date of decision : 11.02.2016.

Kamla Devi and others
.... Appellants

Vs.

Chand Ram and others
.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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

Present : None for the appellants.

Mr. Neeraj Khanna, Advocate,
for respondent No.3.

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AMOL RATTAN SINGH, J.

This appeal arises out of the Award of the learned Motor Accident Claims Tribunal, Kaithal, dated 19.12.2007, passed in a claim petition filed before it by the present appellants, who are the widow, sons and parents of deceased Ramphal.

2. The facts leading up to the filing of the petition in the Tribunal are that on 21.11.2006, Ramphal and one Ramesh (also an injured-claimant, in a connected claim petition before the Tribunal), are stated to have been standing at Bus-stand Chuharpur, alongwith one Naresh Kumar and his brother-in-law Virender. Ramphal and Ramesh boarded a 'maxi cab' bearing registration No.HR56-3424, whereas Naresh Kumar and Virender boarded

another 'maxi cab', which was ahead of the one in which Ramphal and Ramesh were sitting.

Respondent No.1, driver of the 'maxi cab' in which Ramphal was sitting, tried to overtake the other 'maxi cab', in a rash and negligent manner, leading to the overtaking 'maxi cab' striking against a culvert and turning turtle and falling into the ditches nearby.

Ramphal is stated to have died on the spot, whereas Ramesh received multiple injuries and was taken to hospital.

On the issue of the negligence of respondent No.1, the learned Tribunal found him guilty of rash and negligent driving, which finding is not subject matter of any appeal brought to the notice of this Court.

3. Coming therefore to the issue of enhancement of compensation, as claimed by the appellants for the death of Ramphal, though they claimed Rs.30,00,000/- as compensation, the Tribunal awarded Rs.7,66,000/-.

As per the claim, Ramphal used to earn Rs.15,000/- per month, drawing salary from a Marketing society and by other means. His salary was Rs.8,300/- per month, as per the salary certificate of the Cooperative Marketing Society, Kaithal, proved before the Tribunal, with no other income proved.

The Tribunal deducted 1/3rd of that amount as what the deceased would have spent on himself and held the dependent income of the appellants-claimants to be Rs.5500/- per month, thereby amounting to Rs.66,000/- per annum. The age of the deceased having been accepted to be 44 years, as per the post mortem report, a multiplier of 11 was applied, thereby coming to a loss of dependent income of Rs.7,26,000/- to the appellants.

Rs.20,000/- was granted by way of loss of love and affection and consortium and another Rs.20,000/- was awarded as compensation for the last rites conducted.

Thus, as already noticed, the total compensation awarded was Rs.7,66,000/-.

Appellant No.1 was held entitled to receive Rs.2,66,000/-, with the remaining Rs.5,00,000/- to be divided in equal shares amongst Appellants No.2 to 5.

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

4. Though nobody appeared today on behalf of the appellants and none had appeared on their behalf even on the previous two dates, the question of enhancement is to be decided in the light of law already settled, as applicable to the facts of the present case and hence, being a matter pending since 2009, having been put up again for motion hearing, since 2014, it has been taken up for final disposal.

Mr. Neeraj Khanna, learned counsel appearing for Insurance Company (respondent No. 3), did try and oppose the appeal, yet he could not refute the Courts' query, that in terms of the judgments of the hon'ble Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another** (2009) 6 SCC 121, **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, the compensation awarded is to be enhanced, in terms of the ratio of the law laid down therein.

5. As regards the income of the deceased, the same having been proved by way of a salary certificate, I find no reason to interfere with the same. Hence, that finding is left intact.

However, the cut in the income of the deceased, towards his personal expenses, would not be 1/3rd, in terms of the ratio of the judgment in *Sarla Vermas' case* (supra), as there were five claimants (present appellants before the Tribunal), being the widow, two sons and parents of the deceased. Though both the sons of the deceased are shown to be 22 and 20 years old respectively, as per the memo of the parties before the Tribunal, nothing could be shown that they were earning independently and were not dependent on the salary of Ramphal at the time of his death.

Hence, accepting that all five claimants were dependent on the income of Ramphal, the cut in such income, towards his personal expenses, is to be taken as 1/4th rather than 1/3rd.

Thus, to the income of Rs.8300/- per month, upon applying a deduction of 1/4th thereto, the monthly dependent income of the appellants works out to be Rs.6225/- and the annual dependent income to Rs.74,700/-

6. To the above annual income, is to be added the loss of future prospects of income, which would have come to the benefit of the appellants, had the earning hand in their family, i.e. deceased Ramphal remained alive.

Though this issue is stated to be again under consideration of the hon'ble Supreme Court, the law as it stands today, on this issue, is laid down in **Sarla Vermas'** case (supra) and later in **Rajeshs'** case (supra) and **Vimal Kanwars'** case (supra).

As per these judgments, if a deceased is between 40-50 years of age, as in the present case, 30% of his income, as on the date of his death, is to be added to that income, to calculate the loss of future prospects of income to the claimants, of course deducting from that also, the personal expenses that the deceased would have spent on himself.

Though an argument can be raised that the second and third appellants being young adults, would earn their own income in the future, that argument cannot hold good qua the first appellant and appellants No. 4 and 5, i.e. the widow of the deceased and his parents. Though the rationale may be correct qua respondents No. 2 and 3, it would only be an issue of apportionment *inter se* claimants, and cannot be, in the opinion of this Court, a ground for denial of the loss of such future prospects qua the widow and parents.

Thus, what is to be calculated and added now, is 30% of Rs. 74,700/-, (i.e. the annual dependent income of the appellants), the deduction already having been made from the income of the deceased, towards his personal expenses.

Therefore, to the annual income of Rs.74,700/-, a sum of Rs.22,410/- (30% of Rs.74,700/-) is to be added, reaching a figure of Rs.97,110/-.

To the above, a multiplier of 14 is to be applied, again in terms of the ratio of *Sarla Vermas' case,* the deceased being 44 years of age, thereby bringing the total loss of dependent income to be Rs.13,59,540/-.

7. Coming to the loss of consortium to appellant No.1, again as per the ratio of aforesaid judgments, Rs.1,00,000/- is to be awarded to her and is so awarded. For the loss of love and affection of their father, at an early age of 44 years, a sum of Rs.50,000/- each is awarded to appellants

No.2 and 3, as also to appellants No.4 and 5, for the loss of love and affection of their son.

Though in the cases of *Rajesh v. Rajbir* and *Vimal Kanwar v. Kishore Dan,* a sum of Rs.1,00,000/- to Rs.2,00,000/- was awarded by the Supreme Court to the daughters of the deceased, as also to the mother of the deceased, in my opinion, since appellants No.2 and 3 were at least young adults at the time of the death of their father, Rs.50,000/- compensation, though not wholly sufficient, is awardable. The same would apply to the parents of the deceased, who are shown to be 70 and 65 years old respectively, in the memo of parties before the Tribunal.

8. The sum of Rs.20,000/- awarded by way of last rites, also falls short of Rs.5000/- in terms of the ratio of the aforesaid judgments, and is consequently enhanced to Rs. 25,000/-

9. In view of what has been held above, the compensation now awarded is as follows:-

i)	Loss of dependent income, including loss of future prospects of income	: Rs.13,59,540/-
ii)	Loss of consortium to appellant No.1	: Rs.1,00,000/-
iii)	Loss of love and affection to appellants No.2 to 5	: Rs.50,000/- each (Rs.2,00,000/-)
iv)	Expenses on funeral and last rites	: Rs.25,000/-
	Total	: Rs.16,84,540/- round off to Rs.16,85,000/-

Thus, a sum of Rs.9,19,000/- is awarded to the appellants, over and above the amount awarded by the Tribunal.

The enhanced compensation amount would carry an interest @ 7% per annum, running from the date of filing of the claim petition till the date of realization thereof. Half the aforesaid sum would be paid to appellant No.1 and the remaining Rs.4,57,000/- would be apportioned equally between the other four appellants. The amounts would be deposited by way of a fixed deposit for six months

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

(AMOL RATTAN SINGH)
11.02.2016 **JUDGE**
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