**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.342 of 2009
Date of decision : 01.04.2016.**

Lali Devi and others

.... Appellants

Vs.

Niranjan Pal and another

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

None for the respondents.

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AMOL RATTAN SINGH, J.

This is an appeal filed by the claimants before the Motor Accident Claims Tribunal, Narnaul, in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988. The appellants herein (hereinafter to be referred to as the claimants), are the widow, son and mother respectively, of the late Lal Chand, who unfurtunately died at the age of 48 years, after he met with a motor vehicle accident, on 22.05.2007.

2. As per the facts, taken from the impugned Award, Lal Chand was travelling to Bassai from Sehlang, on a tractor bearing registration No.HR-26C-2240, driven by respondent No.1, Niranjan Pal, allegedly at a high speed and in a rash and negligent manner. The said driver is stated to have lost control over the tractor, which then turned turtle. Lal Chand is stated to have suffered serious injuries, due to which he died at the spot

itself. The post mortem examination was conducted and the matter reported to the police and an FIR was registered, at Police Station, Mohindergarh.

3. Notice of the claim petition was issued to the two respondents, the first of whom, as already noticed, was the driver of the "offending vehicle" and the second, Ram Phal, was the owner thereof. However, only respondent No.1 put in appearance through counsel and after availing many opportunities, still did not file any written statement and was consequently proceeded against *ex parte,* because thereafter none appeared even on his behalf. Respondent No.2, i.e. the owner, never put in an appearance at all despite service and was also proceeded against *ex parte*, by the learned Tribunal.

4. With no written statement filed, no issues were framed by the Tribunal, which then went on to hear the oral testimonies of the witnesses for the claimants and to appraise the documentary evidence submitted by them.

5. Manoj Kumar, Assistant Ahlmad, appeared as PW1 and deposed with regard to the criminal case pending in the Court of the Sub Divisional Judicial Magistrate, Mohindergarh, pursuant to the FIR registered on 23.05.2007.

Appellant-claimant No.1, Lali Devi, appeared as PW2 before the Tribunal, tendering her affidavit, in support of which she testified, reiterating the contents of the claim petition. As per this witness, her husband was 48 years of age and in sound health at the time of his death and was earning Rs.10,000/- per month, being an agriculturist who was also dealing in cattle.

6. The learned Tribunal also found that Ex.PA was the copy of the report submitted under Section 173 Cr.P.C. by the police, to the competent Court, from which it was revealed that the FIR had been registered at the instance of one Sumer, brother of the deceased, who had stated that when he reached the spot, on getting information of the accident, he found the tractor in question to have turned turtle, and he was told that the accident took place due to the rash and negligent driving on the part of Niranjan Pal.

From the testimony of the Assistant Ahlmad, the learned Tribunal also found that a charge had already been framed against the accused, and accordingly it was held, in the absence of any evidence led to the contrary, that respondent No.1 was guilty of negligence in driving the tractor, leading to the death of Lal Chand.

The post mortem report (Ex.PC before the Tribunal), also stated that his death had occurred after a road side accident.

7. On the question of quantum of compensation, the learned Tribunal held that in the absence of any evidence led to the effect that the deceased was earning Rs.10,000/- per month, the minimum wages payable to an unskilled labourer, at the relevant time, would be the appropriate income to be assessed and accordingly assessed it at Rs.2500/- per month. Thus, the annual income of the deceased was assessed at Rs.30,000/-, to which a deduction of 1/3rd was applied towards his personal living expenses, thereby coming to a figure of Rs.20,000/- as the annual dependent income of the claimants.

However, the multiplier applied was only 10, despite the Tribunal coming to the conclusion, on the basis of the post mortem report, that the deceased was indeed 48 years of age, as claimed. Hence, the total compensation awarded to the three claimants (appellants herein) was Rs.2,00,000/-, with Rs.50,000/-apportioned to appellants No.2 and 3 (i.e. the son and mother of the deceased) and Rs.1,00,000/- to appellant No.1, the widow of the deceased.

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

8. Before this Court, it is seen that despite service, none appeared for respondent No.2, who is stated to be the owner of the tractor bearing Registration No.HR-26C-2240, with which deceased Lal Chand met with an accident, leading to his unfortunate death on 22.05.2007.

The said respondent (Ram Phal) was, accordingly, proceeded against *ex parte,* by this Court also, vide order dated 07.05.2014.

Today, none has appeared for respondent No.1 either, though he was earlier duly represented by his counsel on each date.

9. Learned counsel for the appellant submitted that other than the application of a wrong multiplier, the learned Tribunal has also erred in, firstly, assessing the income of the deceased to be only Rs.2500/-, whereas even as per the minimum wages notified by the Government of Haryana w.e.f. 01.07.2007, an unskilled labourer was to be paid Rs.3510/- per month.

He further submitted that the Tribunal awarded nothing to the first appellant for the loss of consortium and no amount to the 2nd and 3rd appellant, for the loss of love and affection of their father and son respectively.

Mr. Yadav further submitted that no amount has been awarded towards funeral expenses and last rites of the deceased and yet further, nothing has been awarded by way of loss of future prospects of income, because undoubtedly, an earning person would continue to earn at higher rates, even if simply inflationery trends are taken, and as such, that amount should have been factored in by the Tribunal.

10. Before coming to the issue of enhanced of compensation claimed, it is necessary to notice that with the respondents not having appeared before the Tribunal at all, whether or not the deceased was travelling as a gratuitous passenger and as such, any claim could or could not lie against the resondnets, for his death, was an issue never argued before the Tribunal. Thus, with the respondents both having been proceeded against *ex parte* and no evidence led on their behalf, and not even a written statement filed to controvert the contents of the claim petition, and yet further, there being no appeal filed by the respondents against the Award of the Tribunal, this Court is not required to go into that issue, or the issue of negligence held against respondent No.1.

11. Having considered the arguments of learned counsel for the appellants, it is first seen that as regards the assessed income of the deceased, minimum wages of Rs.3510/- were notified by the Haryana Government only w.e.f. 01.07.2007. At the time of the accident (22.05.2007), the notified minimum wages for an unskilled labourer, as per the chart of minimum wages maintained by this Court, were Rs.2553.58 paise per month. Hence, that is the income which at best can be assessed, that the deceased may have earned as an unskilled labourer, at the time of his death, in the absence of any evidence led before the Tribunal, that he was earning a higher amount. Consequently, taking the above said exact sum as the statutory minimum wages payable to the deceased, the annual income of

the deceased would come to Rs.30,643/-. From that, a deduction of 1/3rd is to be made towards the personal living expenses of the deceased, in terms of the judgment in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121. Thus, a sum of Rs.10,214/- is to be deducted from the aforesaid amount of Rs.30,643/-, upon which the dependent annual income of the three appellants comes to Rs.20,429/-.

12. It is seen that as regards the multiplier applied, the Tribunal erred in applying a multiplier of only 10. In the case of a person who died at the age of 48 years, as per the ratio of the judgment in *Sarla Vermas'* case (supra), a multiplier of 13 is to be applied. Applying that multiplier to the aforesaid sum of Rs.20,429/- the loss of dependent income to the appellants-claimants works out to Rs.2,65,577/-, without adding any amount towards loss of future prospects of income, which would be an issue to be separately looked at.

13. Before that, it is seen that the Tribunal further erred inasmuch as, other than Rs.2,00,000/- awarded under the head of loss of income, no amount, whatsoever, has been awarded either for loss of consortium to appellant No.1, or by way of loss of love and affection of his father to appellant No.2, or towards loss of love and affection of her son, to appellant No.3.

Accordingly, in terms of the judgments in **Rajesh and others vs. Rajbir Singh and others,** 2014(1) 173 PLR 779, **Vimal Kanwar and others vs. Kishore Dan and others** (2013)(7) SCC 476 and **Reshma Kumari v. Madan Mohan,** 2013 ACJ 1253, Rs.1,00,000/- is awarded towards loss of consortium to respondent No.1-widow of the deceased and Rs.50,000/- each to appellants No.2 and 3, i.e. the major son of the deceased and the mother of the deceased respectively, by way of loss of love and affection. Rs.25,000/- is also awarded to respondents No.1 and 2, in terms of the aforesaid judgments, towards funeral expenses and last rites of the deceased.

14. As regards the grant of compensation towards the loss of future prospects of income, that question is under consideration of a larger Bench of the Supreme Court, as referred to such Bench in **National Insurance Co. Ltd. v. Pushpa**, (2015) 9 SCC 166. In the present case, the deceased not being on a fixed salary in a permanent job, obviously the outcome of the decision of the larger Bench, would eventually apply to the case of the present appellants. Consequently, as has been done by this Court in other cases, the loss of future prospects of income is being calculated as per the ratio of law laid down in *Sarla Vermas'* case (supra), read with *Rajesh v. Rajbir and Vimal Kanwars'* cases (supra). However, this amount would be disbursed to the appellants only subject to the outcome of the decision of the larger Bench of the Supreme Court.

Since the deceased was 48 years of age, an increase of 30% of his monthly income of Rs.2553.58 is to be added to that income, which amounts to Rs.766/-, which is accordingly taken as the increased future prospects of the deceaseds' income. From that amount, again a duction of 1/3rd is to be made towards the personal living expenses of the deceased, had he continued to live, thereby bringing the dependency of the appellants herein, on the future prospects of increased income of the deceased, to be Rs.510/- per month or Rs.6120/- per annum. To the said sum a multiplier of 13 is to be applied, thereby bringing the total loss of future prospects of income to be Rs.79,560/-.

Thus, if the judgment of the Supreme Court comes to hold that loss of future prospects of income are to be payable even in cases where the deceased was not on a salaried permanent job, then the appellants would be entitled to get this amount also disbursed to them, in the same manner as an Award of the Tribunal is executed and no further reference to this Court would be necessary for that purpose. If the appellants are found entitled to such compensation, then this amount would also carry an interest @ 7.5% per annum, from the date of filing of the claim petition till the date of realization of the amount.

If, on the other hand, the judgment of the Supreme Court holds that such compensation is not payable in such like cases, then obviously, the appellants would not be entitled to the aforesaid Rs.79,560/-.

15. Therefore, the total compensation now awarded by this judgment, to the appellants, (*de hors* the component of loss of future prospects of income), is as follows:-

i)	Loss of income	Rs.2,65,577/-
ii)	Loss of consortium (to appellant No.1)	Rs.1,00,000/-
iii)	For loss of love and affection to appellants No.2 and 3	Rs.50,000/- each =Rs.1,00,000/-
iv)	Funeral expenses and last rites	Rs.25,0000/-
	Total	Rs. 4,90,577/-

(rounded off to Rs.4,90,580/-)

Hence, the said compensation is Rs.2,90,580/- above the compensation sum awarded by the Tribunal. This enhanced compensation shall carry an interest @ 7.5% per annum, as awarded by the Tribunal, running from the date of filing of the claim petition, till the date of realization of the enhanced amount. This sum would be immediately disbursed to the appellants. Appellant No.1 would be paid Rs.1,65,580/-, appellant No.2 would be paid Rs.60,000/- and appellant No.3, the remaining Rs.65,000/- of the enhanced amount of Rs.2,90,580/-.

The amount of Rs.79,560/- calculated by way of loss of future prospects of income would be disbursed only if the ratio of the judgment of the Supreme Court comes in favour of the appellants, as already said in paragraph 14 hereinabove.

The appeal is accordingly allowed, as above.

No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

01.04.2016