IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5563 of 2009 (O&M)
Date of Decision : 02.02.2016

Phulla Devi and others ....Appellants

Versus

Raju Dan Charan and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Yogesh Chaudhary, Advocate
for the appellants.

Mr. R.K. Bashamboo, Advocate
for respondent no. 3.

Mr. Surinder Gaur, Advocate
for respondent no. 4.

Mr. Rohit Goswami, Advocate
for Mr. Vinod Chaudhri, Advocate
for respondent no. 5-Insurance Company.

Surinder Gupta, J.

CM No. 16235-CII of 2015

This is an application under Order XXII Rule 3 read with Section 151 of the Code of Civil Procedure (CPC) to implead legal heirs of appellant no. 1-Phulla Devi, who is stated to have died on 18.01.2015, leaving behind legal heirs as mentioned in para 3 of the application.

The application is supported by affidavit, as such, allowed. Amended memo of parties be taken on record.

FAO No. 5563 of 2009

This is appeal filed by Phullo Devi and others seeking enhancement of compensation as awarded by the Motor Accident Claims Tribunal, Jind (later referred to as 'the Tribunal') for the death of Rajender Singh in a motor accident. Claimant-appellant no. 1 is mother of the deceased and claimants-appellants no. 2 and 3 are son and daughter respectively, of the deceased.

2. Case of claimants, in brief, is that on 06.09.2007, the deceased alongwith his co-driver Chandi was going from Bangalore (Karnataka) to Baddi (Himachal Pradesh) while driving lorry/truck bearing registration No. HR-38M-8877. Sanjay and his co-driver Mahipal were following the truck of deceased in their lorry/truck bearing registration No. HR-38G-4377. When they reached near Nadavlakoppa on National Highway No. 13, a truck bearing registration No. HR-38L-1102 (later referred to as 'the offending vehicle') came from opposite side. It was being driven in a rash and negligent manner by its driver i.e. respondent no. 1-Raju Dan Charan. While attempting to overtake the vehicle ahead of the offending vehicle, it hit the truck of the deceased as a result of which cabin of truck was completely damaged resulting in serious injuries and death of Rajender Singh. The matter was reported to the police vide FIR (Ex. P-4) registered at Police Station Kushtagi. It is alleged that the deceased was 45 years of age and was earning ₹7000/- per month as salary from his employer. He was also having income of ₹10,000/- per month from agriculture.

3. Respondent no. 1-driver of the offending vehicle in his written statement admitted the accident but alleged that it took place due to rash and negligent driving of the deceased. Similar plea was taken by respondent no. 2-owner of the offending vehicle while respondent no. 3-Insurance Company denied the accident.

4. On appreciation of evidence, the Tribunal held that the

accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1 and allowed compensation of ₹3,15,080/- to claimants, which was computed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Rajender Singh	₹3500 per month
(ii)	1/3rd of (i) above was deducted towards personal expenses	₹3500 - ₹1166 = ₹2334 per month
(iii)	Applied multiplier of 10 **(though, Tribunal held suitable multiplier to be 13, however, multiplier of 10 was applied while calculating the compensation)**	(₹2334X12X10) = ₹280080
(v)	Expenses for transportation of dead body of the deceased	₹15000
(vi)	Funeral expenses	₹20000
Total		**₹315080**

5. Learned counsel for the appellants has argued that the Tribunal has taken income of the deceased as ₹3,500/- per month despite there being evidence on record that he was getting ₹7000/- per month as salary. While referring to judgment in case of ***Minu Rout and another*** ***vs.*** ***Satya Pradyumna Mohapatra and others*, 2013 (10) SCC 695** he has argued that the accident in that case had taken place on 08.11.2004. The deceased was driver of a car and the Apex Court has taken his income as ₹6000/- per month considering the job of a driver as skilled job. He has also referred to observations of Delhi High Court in case of ***Mahrunisha and others*** ***vs.*** ***Mohd. Naseem Haider and others*, 2013 (2) AICJ 626** where the deceased was a truck driver. The accident had occurred on 24.09.2009 and income of the deceased was taken as ₹7500/- per month.

6. Learned counsel for respondent has argued that though the deceased was truck driver yet documentary evidence produced by claimants was not sufficient to hold his income as ₹7000/- per month. His employer appeared as RW-1 but could not produce any evidence with regard to income of the deceased and his mere statement that he was paying ₹7000/- per month as salary to the deceased was rightly discarded by the Tribunal.

7. Admittedly, the deceased was a truck driver. The Apex Court in ***Minu Rout's case (supra)*** while assessing income of a driver in the year 2004 has observed that post of a driver is a skilled job and his income in the year 2004 should have been taken as ₹6000/- per month while awarding just and reasonable compensation. In this case, the accident had taken place in the year 2009. Keeping in view the high rate of inflation and increase in the salary of daily wager and other workers, the plea by claimants that the deceased was getting ₹7000/- per month as salary cannot be doubted. They have examined his employer who had stated that he was paying ₹7000/- per month as salary to the deceased. However, he could not produce any income tax return or account book regarding payment of salary to the deceased. He had stated that there are about 20 drivers working under him but he was not paying any PF or ESI for any of his drivers or any other employee. If the employer is not maintaining due record or violating any provision of law, this should not reflect adversely on the employees or their dependants. Keeping in view the observation of Apex Court in the above cited case, it will be appropriate to take monthly income of the deceased as ₹7000/-

per month. The deceased was 45-46 years of age at the time of his death. Though, the Tribunal found 13 as suitable multiplier but had applied multiplier of 10 while calculating the amount of compensation. As per observations in case of ***Sarla Verma and ors.* vs. *Delhi Transport Corporation and another*, (2009) 6 SCC 121**, the multiplier to be applied in this case is 13. In view of observations in the cases of ***Rajesh and others* vs. *Rajbir and others* (2013) 9 SCC 54** and ***Munna Lal Jain and others* vs. *Vipin Kumar Sharma and others*, 2015 (3) RCR (Civil) 447**, claimants are also entitled to addition of 30% in the income of the deceased towards future prospects.

8. The concept of future prospects envisages chances or opportunities for success and further progress in life which is a normal course of event for every human being involved in any avocation. Even if, keeping in view his ability, capacity etc., one may not be in a position to rise in life, there is another aspect that justifies the grant of addition in the income of the deceased, which is the 'inflationary trend' in which we all are living. I take instance of a tailor. It is a matter of common knowledge that stitching charges have increased manifold during last two decades due to increase in expenses of material/labour charges/margin of persons in this profession, with consequential increase in their income. This is because of high increase in the cost of living. The dependents of a deceased in accident have also to face the same situation. The amount of compensation is required to be just and reasonable keeping the inflationary trend in view, where the prices of the basic amenities of life are likely to increase further.

9. Claimant-appellant no. 1 being mother and claimants-appellants no. 2 and 3 being minor son and daughter of the deceased are also entitled to compensation towards loss of estate, love and affection, which is quantified as ₹1 lac for the mother and ₹1 lac for the children.

10. In view of my above discussion, the amount of compensation to which claimants are entitled is tabulated as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Rajender Singh	₹7000 per month
(ii)	30% of (i) above to be added as future prospects	₹7000 + ₹2100 = ₹9100 per month
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	₹9100 - ₹3033 = ₹6067 per month
(iv)	Compensation after multiplier of 13 is applied	(₹6067X12X13) = ₹946452
(v)	Loss of estate for the mother	₹100000
(vi)	Loss of love and affection for the children	₹100000
(vii)	Funeral expenses as allowed by the Tribunal	₹20000
(viii)	Transportation of dead body of the deceased as allowed by the Tribunal	₹10000
	Total	₹1176452

11. Instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Rajender Singh is enhanced from ₹3,15,080/- to ₹11,76,452/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. As claimant-

appellant no. 1 has since died, the amount of enhanced compensation will be equally shared by claimants-appellants no. 2 and 3. The share of appellants No. 2 and 3, who, as per their age given at the time of filing of the claim petition, are still minor, will be deposited in some nationalized bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minor as required at the time of deposit of the amount and the minor shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in their name after the date of attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions the bank usually gives to bring order of the Tribunal to get payment even after attaining the age of majority by depositor. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed at ₹20,000/-.

February 02, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether to be referred to the Reporters? Yes/No