IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1395-2011 (O&M)
Date of decision: 10.2.2016

Bhupinder Kaur and others ...Appellants

Versus

Mittar Singh and others ...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Ms.Mansi Bansal, Advocate for
Mr.SK Sharma, Advocate for the appellants

Mr.Ravi Gakhar, Advocate for
Mr.Jagdish Manchada, Advocate
for respondents No.1 & 2

Mr.DR Bansal, Advocate for respondent No.3.

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SNEH PRASHAR, J.

The present appeal has been filed by the claimants-appellants seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri vide award dated 15.3.2010 on account of death of Kuljinder Singh in a motor vehicular accident.

The submissions made by learned counsel for the parties have been heard and record perused.

Learned counsel for the appellants submitted that the deceased was a Peon in Haryana Agriculture Marketing Board and was drawing salary of Rs.12,500/- per month. In addition to the same, the deceased was raising agricultural income as is proved from the documents Ex.P4 to Ex.P60 relating to sale of crop. He was independently managing the agricultural land measuring 2½ acres owned by him as well as the 30 acres owned by his father. The loss of his skill in managing the land could be estimated as Rs.12,500/- per month. However, the Tribunal deducting the amount of financial assistance extended to his wife for a period of 15 years under the welfare scheme of the State Government and totally ignoring the agricultural income, awarded only a sum of Rs.1,28,628/- as compensation, which is contrary to the law laid down by this Court in **Oriental Insurance Company Ltd. Vs. Saroj Devi and others, 2012 (1) PLR 761**.

Learned counsel further submitted that no amount was awarded under the heads of loss of love and affection to the parents and loss of love, care and guidance to the children. The amount awarded i.e. Rs.7000/- as expenses on last rites and Rs.10,000/- under the head of loss of consortium is on the lower side.

On the other hand, learned counsel for the respondents submitted that as proved by PW1 Raj Kumar Estate Officer, Market Committee Sadhaura, the wife of the deceased will be getting full salary with increased benefits from time to time till the year the deceased would have attained the age of superannuation and therefore, the claimants suffered no loss of income/ dependency. Considering the said facts a just and appropriate compensation has been awarded to the claimants.

In **Saroj Devi and others' case (supra)** the legal issue before this Court was regarding the measure of compensation that an insurance company or an owner is required to pay, in case of a death having been caused by the use of motor vehicle in a public place, in the face of a compassionate assistance policy formulated by the State (State of Haryana) which enables the claimants i.e. deceased's family, to tide over the financial crisis, resulting from the death of the earning member, by providing full salary for a certain number of years (which is determined as per the age of the deceased government employee) followed by family pension for the remainder term. The query was answered in the terms reproduced hereunder:-

> “Every law framed by the State has an ‘Object’ attached to it because law is never created in vacuum. In order to achieve a particular Object, a reasoning or justification is required as to why the ‘Object’ is sought to be achieved. I believe that the scheme of compassionate assistance is in recognition of the services already put in the discharge of the affairs of the government and a further recognition that the deceased would have

> continued to perform his services diligently but for his demise. I am even inclined to hold that the compassionate assistance coming from the State is itself a form of deferred wage, which the deceased employee has earned by putting in his labour and effort in the service of the State. I, therefore, hold that financial assistance under the Compassionate Assistance Rules and the compensation as assessed under the relevant provisions of Motor Vehicles Act are mutually exclusive and have no reciprocal bearing on the quantum as arrived at under the respective heads. Accordingly, I hold that the Insurance Companies are liable under the terms of their contract with the insured, independent of the financial assistance as received under State compassionate assistance policy, to pay the compensation as assessed by the learned Tribunals under Section 166 or 163 A of the Motor Vehicles Act, except to the extent worked out in accordance with the formulae as detailed hereinabove."

The above view was affirmed by the Division Bench of this Court in **"Reliance General Insurance Company Limited Vs. Purnima and others"**, **"FAO No.1322 of 2010"** and other connected appeals, decided on 21.12.2012.

In the case in hand, the deceased was working as Peon in Agriculture Marketing Board, Haryana and was 32 years old when he died in the accident. PW1 Raj Kumar, Estate Office, Market Committee, Sadhaura proved the salary slip Ex.P2, according to which, the deceased was getting salary of Rs.9528/-, as assessed by learned Tribunal. As per the Notification dated 1.8.2006, issued by the Haryana Government called as Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006, the widow of deceased Kuljinder Singh would get full salary for 15 years alongwith the annual increment as well as the salary increased from time to time as per rules. The gross salary of the deceased as per salary slip Ex.P2 does not cross the income tax exemption limit keeping in mind that the deceased would have made savings as permitted under the Income Tax Rules. Accordingly, the compensation payable to the appellants -claimants comes as under:-

Monthly income in Rupees)	**Actual age of the deceased**	**Notional age (Actual age of the deceased+ the number of years of full last drawn salary as per Compassionate Rules)**	**Increase in future Income as per *Sarla Verma***	**Annual dependency**	***Multiplier as per Sarla Verma (to be broken into 2 parts if multiplier spills over the age of 58 yrs. Before + after superannuation)***	**Compensation for full Salary period i.e. upto 58 yrs. (rounded off)**	**Compensation for Pension Period i.e. after 58 years (rounded off)**	**Total compensation : (column 8+ column 9**
9528	**32**	**32+15=47**	30%	**3/4th x 12**	**13 (11+2)**	**1226214/-**	**111474/-**	**13,37,688/-**

Appellant No.1 is the wife, appellants No.2 and 3 son and daughter and appellants No.4 and 5 are the old parents. In view of **<u>Vimal Kanwar and others vs. Kishore Dan and others (2013-</u>**

<u>3) PLR 776</u>, in my considered opinion the ends of justice would be served, if a sum of Rs. one lac towards loss of consortium (including the amount already awarded this head); Rs.50,000/- on account of loss of love and affection to the mother on her furnishing an affidavit, if alive; Rs. one lac under the head of loss of love, care and guidance to the children, to be paid in equal shares is allowed to the claimants. The amount awarded on account of last rites expenses is also enhanced from Rs.7,000/- to Rs.25,000/-.

Accordingly, the enhanced amount of compensation i.e. Rs.14,62,60/- shall be paid to the appellants within 45 days from the date of receipt of the certified copy of this judgment, failing which, the same shall carry interest @ 7.5 % per annum from the date of filing of the appeal till its realisation. At the first instance, the enhanced amount will be paid by the Insurance Company and later on, it can be recovered from the owner and driver of the offending vehicle.

In view of the above, the present appeal is partly allowed and the award is modified to the above extent.

10.2.2016 **(SNEH PRASHAR)**
gsv **JUDGE**