IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : May 30, 2016

1. **F.A.O No. 1932 of 2011 (O&M)**

   Preeto Devi and others vs Bakhtour & others

2. **F.A.O No. 1939 of 2011 (O&M)**

   Preeto Devi and others vs Bakhtour & others

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CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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Present : Mr. Arun Bansal, Advocate
for the appellants.

Mr. V.M Gupta, Advocate
for respondent No.3.

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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Ajay Tewari, J (Oral)

These two appeals bearing FAO Nos.1932 and 1939 of 2011 arise out of an accident in which two persons viz Madan Lal Sharma and his wife Veena Devi died. In FAO No.1932 of 2011, the claimants the mother and two children of the deceased-Madan Lal Sharma, while in

FAO No.1939 of 2011, the claimants are the mother-in-law and two children of the deceased-Veena Devi.

Brief facts are that on 1.12.2007 at about 7 pm, the deceased-Madan Lal Sharma along with his wife Veena Devi @ Veena Kumari, was going on his motor cycle to village Malikpur, Tehsil Pathankot from Ward No.11 Kathua (J&K) to meet his relatives along with his cousin brothers Kewal Krishan and Jaswant Singh who were following the deceased on their motor cycle, and when they reached opposite Railway Station Madhopur, the offending truck coming from behind, being driven by respondent No.1, rashly and negligently struck against the motor cycle of the deceased. As a result of this accident, deceased Madan Lal and Veena Devi sustained serious injuries, Veena Devi died at the spot, while Madan Lal died in the hospital on the same day.

The Tribunal held respondent No.1 responsible for causing the accident. As regards the death of Madan Lal Sharma, the Tribunal granted a total compensation of ₹ 14.40 lacs, while in the case of deceased Veena Devi, the Tribunal granted a total compensation of ₹ 13.26 lacs.

<u>FAO No.1932 of 2011</u>

Counsel for the appellants has argued that though actually the salary of the deceased on the date of accident i.e 1.12.2007 was ₹ 18571/- yet subsequently recommendations of 6th Pay Commission were accepted w.e.f 1.1.2006 and as per that, salary of the deceased would have been increased to ₹ 24,184/- and that the Tribunal erred in dismissing this only on the ground that the increased salary was never given to the deceased.

I am in agreement with counsel for the appellants. Once it is proven that w.e.f 1.1.2006, salary had gone up, the mere fact that the same was not released on the date of death would not justify that the same be ignored. In the circumstances, salary of the deceased is taken to be ₹ 24,184/-. In view of the decision of the Hon'ble Supreme Court in Rajesh and others vs Rajbir Singh and others, 2013(9) SCC 54, 15% future prospects are granted. Deduction has rightly been fixed at 1/3rd.

Counsel for the appellants that the multiplier of 10 has been applied, whereas it should have been 11 in view of the decision of the Hon'ble Supreme Court in Sarla Verma and others vs Delhi Transport Corporation and another, AIR 2009 (SC) 3104. This is also accepted.

Counsel for the appellants has further argued that nothing has been awarded for last rites and loss of love and affection. I find this also to be correct. In the circumstances, I award a sum of ₹ 25,000/- as funeral expenses. I further award a sum of ₹ 50,000/- each to appellants

No.1 and 3 (mother and son) towards loss of love and affection, and an amount of ₹ 1 lac to appellant No.2 (daughter) for loss of love and affection. The enhanced amount shall carry interest @ 8% pa from the date of application till the date of payment. The share of appellant No.1 be put in a fixed deposit for a period of three years and she would be entitled to monthly interest for the same.

FAO No.1939 of 2011

Counsel for the appellants has argued that though actually the salary of the deceased on the date of accident i.e 1.12.2007 was ₹ 13222/- yet subsequently recommendations of 6th Pay Commission were accepted w.e.f 1.1.2006 and as per that, salary of the deceased would have been increased to ₹ 17,993/- and that the Tribunal erred in dismissing this only on the ground that the increased salary was never given to the deceased.

I am in agreement with counsel for the appellants. Once it is proven that w.e.f 1.1.2006, salary had gone up, the mere fact that the same was not released on the date of death would not justify that the same be ignored. In the circumstances, salary of the deceased is taken to be ₹ 17,993/-. In view of the decision of the Hon'ble Supreme Court in Rajesh and others vs Rajbir Singh and others, 2013(9) SCC 54, 30% future prospects are granted. Deduction has rightly been fixed at 1/3rd.

Counsel for the appellants that the multiplier of 13 has been applied, whereas it should have been 14 in view of the decision of Sarla Verma and others vs Delhi Transport Corporation and another, AIR 2009 (SC) 3104. This is also accepted.

Counsel for the appellants has further argued that nothing has been awarded for last rites and loss of love and affection. I find this also to be correct. In the circumstances, I award a sum of ₹ 25,000/- as funeral expenses. I further award a sum of ₹ 1 lac to the daughter-appellant No.2, and a sum of ₹ 50,000/- to the son-appellant No.3 for loss of love and affection. The enhanced amount shall carry interest @ 8% pa from the date of application till the date of payment. Apart from the individual amounts awarded, out of the enhanced amount 20% shall go to appellant No.1-Preeto Devi (mother-in-law) and 40% each shall go to the children of the deceased i.e appellants No.2 and 3. Share of appellant No.1 be put in a fixed deposit for three years and she would be entitled to monthly interest for the same. Since both the appellants are now stated to be major, the enhanced amount falling to their share shall be handed over to them individually. These appeals stand disposed of accordingly.

(AJAY TEWARI)
JUDGE

May 30, 2016
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