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

**FAO No. 2101 of 2011 (O&M)**
**Date of decision: 15.03.2016**

Kiran Luthra

... Appellant

versus

Pawan Kumar and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr. Nitesh Singhi, Advocate for the appellant.

Mr. Sonu Giri, Advocate for
Mr. Sandeep Sharma, Advocate for respondent No.1.

Ms. Puneeta Sethi Advocate, for respondent No.3.

**K.Kannan, J. (ORAL)**

The appeal is for enhancement of claim for compensation for death of a boy aged 20 years. The claimants were mother, father, brother and sister. The deceased was said to be doing jewellery business that was being carried out by his father and the mother's statement was that her son was looking after the business since here husband had become old. The Income tax returns had been filed posthumously that showed that in the year 2004-05 he was having an income of Rs. 49,150/- and in the year 2008-06 he was said to be earning Rs.89,250/-. The birth certificate was not filed but the Court examined the age given in the income tax return and took the age as 20.

Considering that the year of birth given as 1987, the Tribunal took the average income at Rs. 5,000/- applied 50% deduction and applying the multiplier of 11 and assessed the compensation of Rs. 3,50,000/-. The counsel argues that the income taken was low. It is further contended that the choice of multiplier must have been made to depend on the age of the deceased and not on the age of parents. According to him, there has been no appropriate assessment of component of love and affection for the parents.

There is particularly no evidence from the father himself ceased to work. If income tax returns have been filed only subsequent to his death, the court was justified in rejecting them and taking the average income to be Rs. 5,000/-. Admittedly, the deceased was not highly qualified in education and if the Tribunal was taking Rs. 5,000/- as the average income, I will not find any need for making any prospect for future increase. I find particularly no extra ordinary circumstances to deviate from the principle of assessment to compensation as laid down in <u>Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77.</u> I also provide for loss of love and affection to the parents in the manner suggested by the Hon'ble Supreme Court in <u>Rajesh and others Vs. Rajbir Singh and others, 2013 (9) SCC 54.</u> The various heads are tabulated as under:

| | | | |
|---|---|---|---|
| **<u>Fatal</u>** | Date of accident | 16.03.2007 | |
| Age | 20 | | |
| Occupation | | | |

| | | | |
|---|---|---|---|
| Claimants | Mother, father, brother, sister | | |
| **SR. No.** | **Heads of claim** | **Tribunal Amount (Rs.)** | **High Court Amount (Rs.)** |
| 1 | Income | 5,000/- | |
| 2. | Add, % of increase, 30%/50% | | 5,000/- |
| 3. | Deduction, 1/2, 1/3, 1/4, | | 2,500/- |
| 4. | Multiplicand | | 30,000/- |
| 5. | Multiplier | | 18 |
| 6. | Loss of dependence | | 5,40,000/- |
| 7. | Medical Expenses | | |
| 8. | Loss of Consortium | | |
| 9. | Loss of love and affection | | 1,00,000/- |
| 10. | Loss to estate | | 5,000/- |
| 11. | Funeral Expenses | 20,000/- | 25,000/- |
| | Total | 3,30,000/- | 6,70,000/- |

The total compensation will be Rs. 6,70,000/- and the additional compensation shall also attract interest @ 7.5% from the date of the petition till the date of payment. The compensation shall be paid to the parents and I will make no provision for the brother and sister who in the presence of father can not taken to be dependents on their brother. The liability shall be on the insurance company. The award stands modified and the appeal is allowed.

**(K.KANNAN)**
**JUDGE**

15.03.2016
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