IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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1. **FAO No.2654 of 2011**
Date of Decision: 03.06.2016

Dharambir and others ... Appellants

Versus

Prithvi Singh and others ... Respondents

2. **FAO No.1421 of 2011**

Prem Singh ... Appellant

Versus

Prithvi Singh and others ... Respondents

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CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/No
2. To be referred to the Reporters or not ? Yes/No
3. Whether the judgment should be reported in the digest ? Yes/No

Present: Mr. Shakti Singh, Advocate for
Mr. Sat Narain Yadav, Advocate, for the appellant(s).

Mr. M.B. Jain, Advocate,
for respondent No.3-Insurance Company.

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SUDIP AHLUWALIA, J. (ORAL)

These two appeals are taken up for disposal together as they arise out of the same award passed by the learned Motor Accident Claims Tribunal, Rewari (for short, 'Tribunal') on 27.07.2010 and are disposed of together by this common order.

The accident in question had taken place on 12.10.2008, in which Smt. Krishna Devi, who is wife of appellant No.1 in FAO No.2654 of 2011, succumbed to her injuries, while the appellant in FAO No.1421 of 2011, namely, Prem Singh, who otherwise does not appear to be related to the deceased sustained injuries on account of which he became permanently disabled to the extent of 13% only as claimed by him.

In relation to the award passed on account of death of the victim Krishna Devi, it is observed that a total compensation of ₹2,49,000/- was awarded. The learned Tribunal applied the multiplier of 13 after assessing the income of the deceased, who was a housewife, at ₹18,000/- per annum. In addition, amounts of ₹5,000/- towards loss of estate, funeral expenses and loss of consortium (each) in favour of the appellants were awarded. The grievance of the appellants is in relation to the assessed income of the deceased, which according to the appellants' counsel ought to have been assessed at ₹3,000/- per month in view of the prevailing judicial trend. In this regard, the appellants' side has placed reliance on the decision of the Coordinate Bench of this Court passed in **FAO No.4428 of 2001** titled as '**Pala Ram and others Vs. Tahseem Khan and others'** pronounced on 21.03.2016. In that decision relying upon the previous Hon'ble Supreme Court's decision in **Arun Kumar Aggarwal Vs. National Insurance Company Ltd., 2010(3) R.C.R (Civil) 827**, it has been held that the contribution of the deceased housewife to the family by way of her services would be to the tune of ₹3000/- per month. Nevertheless, in the case titled as '**Jitendra Khimshankar Trivedi Vs. Kasam Daud Kumbhar and others' 2015(2) SCC (Civil) 581**, deduction from this amount to the extent of 1/3rd was also factored in by the Apex Court, thereby, leaving the net dependency claim to ₹24,000/- per annum. The appellants' side has also cited the Hon'ble Supreme Court's decision in '**Rajesh and others Vs. Rajbir Singh and others' 2013(3) RCR (Civil) 170**, in which it has been held that in the current scenario the statutory compensation amounts specified under the various headings in the original statute have become virtually redundant. In the present case, the learned Tribunal effectively was guided by the very same age old prescriptions in awarding the compensation towards funeral expenses, loss of consortium etc. In para Nos.20 and 21 of the aforesaid judgment, the Hon'ble Apex Court has specifically laid down that an amount of at least ₹1,00,000/- for loss of consortium would be just and reasonable in the present time, while an amount of ₹25,000/- would be payable towards funeral expenses.

These observations of the Supreme Court are particularly applicable in the present case, since the claimant here is the husband, who had crossed the age of 55 years and was, therefore, virtually becoming a senior citizen. His emotional distress would certainly be more acute in comparison to a similar situation, had it occurred during his relatively younger years. So, this Court has no hesitation in applying the observations of the Supreme Court in the present case. The differential in compensation on account of loss of income on account of contributable family services of the deceased comes to ₹6,000/- per annum since the learned Tribunal has already accepted the compensation on the basis of ₹18,000/- per month. Applying the relevant multiplier of 13, the additional compensation payable to the claimants on this account, therefore, comes to ₹78,000/- In addition, the claimants (in *FAO No.2654 of 2011*) are entitled to an additional amount of ₹1,10,000/- towards the heads of loss of estate, funeral expenses and loss of consortium. Consequently, the respondents are jointly and severally liable to pay an additional amount of ₹1,88,000/- to the appellants. No interest on this additional amount shall be chargeable till today. It shall have to be paid with interest at the rate of 6% per annum from today onwards till the date of payment. *FAO No.2654 of 2011* is, accordingly, allowed.

In relation to *FAO No.1421 of 2011*, it is observed that the claimant Prem Singh is aggrieved that insufficient compensation was awarded to him on account of his disablement to the extent of 13%. The learned Tribunal has nowhere made any observation regarding the actual income of the claimant. But considering that he was a young man of 30 years, it is fair to conclude that being fully and physically fit and capable, his income could not have been at a rate less than the prescribed minimum wages at the relevant time, which are assessed at ₹3,600/- per month, i.e., ₹43,200/- per annum. His technical entitlement considering the percentage of his disability would, therefore, appear to be ₹5,616/- per month.

Learned counsel for the respondent's side has, however, cited a decision passed by a Division Bench of this Court in the case titled as **'Piara Singh and others Vs. Satpal Kumar and others' PLR Vol. CXLVI (2007-2) 143**. He has also referred **'Raj kumar Vs. Ajay Kumar and another', SLP (C) No.10383 of 2007** decided on 18.10.2010 to contend that "*the percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45 per cent of the left lower limb, it is not the same as 45 per cent permanent disability with reference to the whole body.*"

In the concluding part of the decision, the Division Bench had resorted to a formula of awarding compensation at the rate of ₹2,000/- for 1% disability. Adopting that formula, the entitlement of the appellant in the present case technically ought to have been ₹26,000/-. It is, however, also seen that the judgment cited does not indicate the age of the injured claimant or the nature of his disability. So, it would be unsafe to apply the said formula *mutatis mutandis* in the present case. In the given circumstances, admittedly, the disability of the claimant is in relation to his restricted movements of the right hip along with mild restricted movement of right shoulder with pain. But the record does not indicate anywhere as to what was the actual occupation of the claimant or to what extent such disability could have caused an impairment to him for the purpose of generating income by doing actual work in his relevant occupation. In these circumstances, the decision of the Hon'ble Supreme Court in paras 18 and 19 in the case of '**Raj Kumar Vs. Ajay Kumar and another'** (supra) does appear to be applicable. Paras 18 and 19 of the judgment in ***Raj Kumar's case (supra)*** are reproduced below:-

> *"18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth*

> *functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.*
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> *19. The evidence showed that at the time of the accident, the appellant was aged around 25 years and was eking his livelihood as a cheese vendor. He claimed that he was earning a sum of Rs.3000/- per month. The Tribunal held that as there was no acceptable evidence of income of the appellant, it should be assessed at Rs.900/- per month as the minimum wage was Rs.891 per month. It would be very difficult to expect a roadside vendor to have accounts or other documents regarding income. As the accident occurred in the year 1991, the Tribunal ought to have assumed the income as at least Rs.1500/- per month (at the rate of Rs.50/- per day) or Rs.18,000/- per annum, even in the absence of specific documentary evidence regarding income."*

For the purpose of deciding this appeal, therefore, it is held that the actual compensation payable to the claimant would have to be at half of the rate of the technical entitlement, i.e., at ₹2,808/- per annum. Applying the relevant multiplier of 17 to the same, his entitlement comes to ₹47,736/-, which is for reasons of convenience rounded to an amount of ₹48,000/-.

Consequently, it is held that the appellant is entitled to an additional amount of ₹8,000/- only towards loss of income. Rest of the award passed in his favour remains unaltered. Simple interest at the rate of 6% per annum shall be payable to the appellant on this additional amount from today onwards till date of realisation.

The appeals are disposed off, accordingly.

No order as to costs.

03.06.2016 **(SUDIP AHLUWALIA)**
Bhumika **JUDGE**