

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of decision: July 18, 2016

(1) FAO No.1451 of 2012 (O&M)

Reliance General Insurance Company Limited

... Appellants

versus

Poonam and others

... Respondents

(2) FAO No.4786 of 2012 (O&M)

Reliance General Insurance Company Limited

... Appellants

versus

Shanti Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Ms. Kaavya Kariyal, Advocate,
for Mr. T.K.Joshi, Advocate,
for the appellants.

Mr.Shiv Kumar, Advocate,
for respondent No.1.

Mr.Arun Kumar, Advocate
for Mr. Manish Jain, Advocate
for respondents No.2 and 3.

Mr.S.K.Tripathi, Advocate
for respondents No.4 and 5.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes

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AMOL RATTAN SINGH, J.

These are two appeals arising from the same Award of the learned Motor Accident Claims Tribunal, Faridabad, by which two claim petitions arising out of the same accident, were decided by the learned Tribunal, on 14.10.2011.

As a matter of fact, two separate claim petitions were filed, one by the widow of the person who died in the accident in question, i.e. Man Mohan Singh, and one by his parents and two unmarried sisters. In the claim petition of the widow, the parents had been impleaded as proforma respondents and in the claim petition filed by the parents and sisters of the deceased, the widow had been impleaded as a proforma respondent.

2. The facts, as taken from the Award of the learned Tribunal, are that on 20.11.2009, the late Man Mohan Singh after performing his duty in the Employees Provident Fund Organization, Gurgaon, was coming on his motorcycle bearing registration No.HR-51/Q-5987, alongwith his colleague, Sunil Bhardwaj. It was stated that Man Mohan Singh was riding his motorcycle at a very slow speed. One Dharambir was coming behind in his car bearing registration No.HR-26-AN-8355, alongwith his friend Ravinder Kumar.

When Man Mohan Singhs' motorcycle reached near Mangar Police 'Naka' (Check Post), a 'dumper' vehicle bearing registration No.HR-38/J-4217 came from the side of Gurgaon at a high speed and hit the motorcycle at its rear side, causing the accident. Man Mohan Singh and

Sunil Bhardwaj fell down from the motorcycle and were run over under the tyre of the dumper and both unfortunately died on the spot.

Respondent No.1, i.e. the driver of the dumper vehicle, allegedly left the dumper on the spot and ran away.

The bodies were removed from the spot by the aforesaid Dharambir and Ravinder Kumar, with the help of passers by and taken to the B.K.Hospital, Faridabad, and FIR No.346 dated 21.11.2009 was got registered by Dharambir. A post mortem examination was also conducted.

3. It was alleged that the deceased Man Mohan Singh possessed an MBA Degree and was working as a Social Security Assistant in the Employees Provident Fund Organisation, with the Government of India at Gurgaon and was an income tax payee.

Both the sets of defendants, i.e. his widow in one claim petition and his parents and sisters in the other, were stated to be dependent totally upon the earnings of the deceased, who was only 28 years old and the only son in his family.

In her claim petition, the widow of the deceased, however, alleged that the deceaseds' father, Dharampal (presently the 2nd respondent in FAO No.4786 of 2012 and also a proforma respondent in FAO No.1451 of 2012), was actually serving in the Industrial Finance Corporation of India, a reputed company, as a Manager with a six digit salary.

It was further contended by the widow that the next promotion of the deceased was due and he was eventually likely to reach to the post of Commissioner and that his salary at the time of his death was about Rs.20,000/- per month.

She further pleaded that in fact, the parents of the deceased had three cars, whereas her own life had been ruined. She further alleged that she had been turned out of her matrimonial home but all the articles of the home, certificates, belongings and ornaments were allegedly snatched by her in-laws.

She, consequently, prayed for a compensation of Rs.75,00,000/-.

4. On the other hand, in the claim petition filed by the parents and sisters of the deceased, it was stated that the deceased was earning Rs.19,691/- per month and that about Rs.30,000/- had been spent on his last rites and transportation charges etc.

It was further stated that only the unmarried sisters of the deceased had been arrayed as parties in the petition and his eldest sister, who was married, had not been so arrayed.

As already noticed earlier, these claimants also stated that they were dependent upon the income of the deceased and that he was a helping hand to the family.

Yet, further, it was pleaded that, in fact, the widow of the deceased, i.e. the claimant in the other petition, had been married to the deceased in November 2008 and at the time of the accident she was 16 weeks' pregnant but, allegedly, in connivance with her parents, had left her matrimonial home and got the foetus aborted, without her in-laws' consent. Hence, it was further alleged, that the parents and sisters of the deceased had lost not only a son/brother but also lost their grand child/niece.

Not only this, it was further alleged that despite the above, the

widow of the deceased had taken the monetary benefits of the service of her husband and was also trying to get a job with his organisation, on compassionate grounds, "without the consent of her in-laws".

These claimants claimed a total compensation of Rs.60,00,000/-.

5. On notice issued, the driver and owner of the dumper vehicle (presently respondents No.4 and 5 in FAO No.1451 of 2012 and respondents No.6 and 7 in FAO No.4786 of 2012), appeared and filed their written statements, taking preliminary objections with regard to maintainability, locus standi and cause of action, further pleading that no such accident took place at all, with the contents of the FIR also being false.

It was further stated that on the date of the accident the dumper vehicle was insured with the Reliance General Insurance Limited (i.e. the present appellant) and that the amount of compensation claimed was highly exaggerated which in any case, they, the driver and owner, were not liable to pay.

6. In its separate written statements filed in both the claim petitions, the present appellant, i.e. the insurance company, also took preliminary objections with regard to maintainability, as also with regard to alleged contravention/violation of the terms and conditions of the insurance policy by respondent No.2, i.e. the owner of the "offending vehicle". It was further contended that the owner and insurer of the motorcycle not having been arrayed as respondents, there was a non-joinder of necessary parties.

Other than that, it was pleaded that the widow of the deceased was getting a pension from her late husbands' organisation. It was further

the case of the present appellant, that it was a case of composite negligence and that the compensation sought had been highly exaggerated.

7. In the written statements filed by the widow, and the parents and sisters of the deceased, in reply to the claim petitions filed by each other, the same stand was taken, as was taken in the claim petitions filed by those arrayed as respondents in the cross petitions. The only difference shown in the Award of the Tribunal is that in the claim petition filed by the widow, the parents of the deceased specifically stated that she had received Rs.3,78,634/- by way of the service benefits of her late husband.

8. On the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

“Issue in claim petition Poonam v. Mohd. Khanu etc., i.e. by the widow:-

1. Whether the accident in question took place due to rash and negligent driving of Dumper No.HR-38J-4217 by Mohd. Khanu, respondent No.1? OPP
2. If issue No.1 is proved, to what amount of compensation petitioners are entitled to and from whom? OPP and OPR
3. Whether respondent No.1 was not holding a valid and effective driving license at the time of accident and insured had also violated the others terms and conditions of the policy and as such respondent No.3 is not liable to make payment of compensation, if any? OPR3
4. Relief.”

Issue in claim petition Smt. Shanti Devi v. Mohd. Khanu, i.e. by the parents and sisters of the deceased:-

1. Whether the accident has taken place on 20.11.2009 at about 9 pm near Mangar Police Naka Gurgaon Faridabad Road, District Faridabad due to rash and negligent

driving of Dumper No.HR-38J-4217 by respondent No.1. If so, whether Man Mohan deceased died in this accident? OPA

2. Whether the petitioners are entitled to claim compensation. If so, how much and from whom? OPA
3. Whether the respondent No.1 was not holding any valid and effective driving license at the time of alleged accident? OPR2.
4. Relief.”

At a later stage, the claim petitions were both consolidated by the learned Tribunal, on a request shown to have been made by the learned counsel for the parties in the two petitions, before the Tribunal.

9. As regards the issue of determination of negligence by which the accident was caused, the learned Tribunal, on the basis of the testimony of eye witnesses Ravinder Kumar, PW6 and Dharambbir PW7, came to the conclusion that the negligence in causing the accident was attributable to the driver of the dumper vehicle (presently respondent No.4/6 in the two appeals) and as such, that issue was decided in favour of the claimants.

It is to be specifically noticed that even in the present two appeals, the said finding is not under challenge, in the grounds of appeal, nor was any argument addressed on the issue of negligence having been wrongly decided. Thus, as regards that issue, the appellant insurance company (in both the appeals), has accepted it as held by the Tribunal.

Therefore, the question in these appeals is only whether the compensation awarded by the Tribunal, to the two sets of claimants, was adequate or not.

It may be further noticed at this stage itself, that the two sets of

claimants have also not filed any appeal challenging the apportionment of compensation awarded by the Tribunal, qua each other.

10. Thus, coming to the issue of compensation awarded by the Tribunal, to assess the income of the deceased, his salary certificate was proved before the Tribunal by PW5, a Supervisor in the Employees Provident Fund Organization, Regional Office, Gurgaon. As per the said salary certificate, the gross salary of the deceased was Rs.19,691/- per month, including house rent allowance, public provident fund, city compensatory allowance etc., including also conveyance allowance of Rs.2032/-.

While keeping the other allowances as a part of the salary payable to the employee and as such a part of the dependent income of those dependent upon him, the learned Tribunal, however, did not allow the travelling allowance to be included in the said sum. Thus, the annual salary was taken to be Rs.17,619/- per month, to which loss of future prospects of increased income, to the extent of 50% of the said salary was added by the Tribunal, thereby making the total monthly income of the deceased (including future prospects of income) to be Rs.26,428.50 paise per month, which amounted to Rs.3,17,142/- per annum.

11. Before applying a deduction towards the personal expenses of the deceased, the Tribunal, on the basis of evidence led, found that the father of the deceased, i.e. claimant Dharampal Rauhilla, was working as an Associate Vice President in the IFCI, earning Rs.56,916/- per month.

Hence, it was held that neither the father of the deceased, nor his two unmarried sisters, could be considered dependent upon the income

of the deceased, with the unmarried sisters obviously being dependent upon their father. Therefore, it was held that only the widow and the mother of the deceased, could be considered to be dependent upon his income.

Thus, taking that he had two dependents upon his income, a 1/3rd deduction was applied to his personal living expenses, from his annual income of Rs.3,17,142/-, thereby coming to the loss of annual dependency, to his widow and mother, to be Rs.2,11,428/-.

12. Since the deceased was 28 years of age, a multiplier of 17 was applied to the aforesaid income, thereby arriving at a sum of Rs.35,94,276/-, as the compensation payable to the widow and mother of the deceased, under the head of loss of income.

In addition, Rs.5000/- were awarded towards funeral expenses, Rs.5000/- towards loss of estate and another Rs.5000/- towards loss of consortium.

Thus, the total compensation payable was assessed at Rs.36,09,276/-.

13. Coming to the apportionment of the aforesaid sum between two sets of claimants, the learned Tribunal concluded even though the unmarried sisters of the deceased were not dependent upon his income but on that of their father, nevertheless, the deceased, being their only brother, would have spent some money out of his own income on their marriages and hence, eventually it was held that out of the aforesaid sum of Rs.36,09,276/-, his two sisters (presently respondents No.3 and 4 in FAO No.4786 of 2012), would be entitled to Rs.2,00,000/- each, the father of the deceased, i.e. respondent No.2 in FAO No.4786 of 2012 and respondent No.3 in FAO

No.1451 of 2012, would also be entitled to Rs.2,00,000/- of the total compensation. His mother, i.e. respondent No.1 in FAO No.4786 of 2012 and respondent No.2 in FAO No.1451 of 2012, would be entitled to Rs.12,00,000/- compensation.

The remaining amount of Rs.18,09,276/- would be payable to his widow, i.e. respondent No.5 in FAO No.4786 of 2012 and respondent No.1 in FAO No.1451 of 2012.

(The aforesaid apportionment has only been noticed by this Court for the record, as it is not under challenge in any appeal filed by the claimants against each other, as already noticed).

Interest @ 7.5% per annum was also awarded on the compensation to the claimants, running from the date of the institution of the claim petitions.

14. Before this Court, Ms. Kaavya Kariyal, learned counsel for the appellants, made a three fold submission; to the effect that, firstly, income tax payable by the deceased was not deducted from his gross salary, by the learned Tribunal.

Secondly, she submitted that the father and the unmarried sisters of the deceased have been considered dependent upon him, whereas the judgment of the Supreme Court is to the effect that unless the contrary is actually proved, the father cannot be taken to be dependent upon the deceased.

As another limb of that argument, learned counsel further submitted that logically, therefore, with the father and two sisters not being dependent upon the deceased, the deduction towards the personal living

expenses of the deceased should have been half of the deceaseds' salary and not 1/3rd, as applied by the Tribunal.

Thirdly, learned counsel submitted that the deceased being an employee of the Employees Provident Fund Organization in the Government of India, the widow of the deceased (respondent No.1) was getting Rs.6275/- per month as pension, after the death of her husband alongwith other service benefits. As such, the loss of dependent income to her should be calculated, by deducting the aforesaid amount from her dependent income upon the deceased.

15. Learned counsel for the respondents-claimants, on the other hand submitted that even if an income tax deduction were to be made from the salary of the deceased, before arriving at the loss of dependent income to the claimants, the slab would only be applied as the one applicable in the year 2010-11.

It was further submitted by both learned counsel appearing for the two sets of respondents-claimants, that even though the claimants have not filed any appeal against the impugned Award, this Court would consider awarding appropriate sums, in terms of settled law, towards loss of consortium, last rites and funeral expenses, loss of love and affection (to the parents and sisters of the deceased). In this regard, they cited a judgment of Supreme Court in **The APSRTC, rep. by its General Manager and another v. M.Radadevi and others**, 2008(1) RCR (Civil) 885.

Further, they cited another judgment of the Apex Court in **Kalpanaraj and others.v TamilNadu State Transport Corporation**, 2015(2) SCC 764, to submit that in addition to the grounds of loss of future

prospects of income and of consortium, loss of estate and expectancy of life, also should be compensated.

Lastly, both learned counsel submitted that the personal living expenses deducted should have been taken to be 1/4th the income of the deceased and not 1/3rd as deducted by the Tribunal.

16. Having considered the arguments of learned counsel on both sides, and the Award of the learned Tribunal, the first thing to be seen is as to whether income tax payable needs to be deducted to assess the loss of dependent income of the claimants, on the deceased.

No law needs to be cited, as it is well settled that though other allowances that the deceased motor vehicle accident victim was receiving, would not be deductible from his gross salary, income tax, however, has to be deducted.

In the present case, the Tribunal, other than the actual income of the deceased, also correctly added the loss of future prospects of an increased income, to the extent of 50% of the actual income, as per the ratio of the judgment of the Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121. This addition of income is not to be disturbed in view of the fact that as regards those victims who were in a permanent salaried job, there is no controversy that such income was actually addable to the existent income, the deceased being less than 40 years of age. The Tribunal therefore correctly added 50% of his actual income towards the loss of future prospects of an increased income.

However, the question is as to whether income tax would be

deductible only as it was applicable to his existent salary, or also by factoring in the future increase in income tax, commensurate with the future salary of the deceased, to the extent of 50% thereof.

In the opinion of this Court, since 50% of the existent salary of the deceased was added by the Tribunal towards loss of future prospects of income, correctly a one time deduction of income tax as was applicable on such enhanced salary (to the extent of 50% thereof) on the date of death of the deceased, would need to be applied.

If an income tax deduction is to be applied only upon the existent income of the deceased, the annual tax payable on an income of Rs.2,11,428/- would be Rs.52,857/-, (which works out to an actual tax of 2.5%), in the assessment year 2010-2011 (the deceased having died on 20.11.2009), as per calculations shown on the official website of the Income Tax Department.

If however, 50% of Rs.2,11,428/- is added to the actual income of the deceased, by way of loss of future prospects of income, the income tax deductible in the same assessment year is shown to be Rs.17,428 (on an income of Rs.3,17,142/-), which is approximately an actual tax of 5.5.% on the gross salary of the deceased.

However, this Court is also to consider that the gross monthly salary of Rs.17,619/-, as taken to be the income of the deceased by the Tribunal (after deduction of Rs.2032/-conveyance allowance), is without permissible deductions under Section 80-C etc. of the Income Tax Act, by his contribution to the provident fund etc. which would obviously be deductible towards calculating the tax payable.

Yet, since that figure is not available with this Court, either for the existent income, or with regard to the loss of future prospects of income, which in any case would be variable dependent upon the saving schemes invested in by the deceased, it is felt appropriate to apply a deduction of 5.5% of actual income tax payable on the existent and future prospects of income of the deceased.

17. Therefore, to the total annual income of the deceased assessed by the Tribunal (existent and future) of Rs.3,17,142/-, a 5.5% deduction, towards payment of income tax, is necessary. The said income tax comes to Rs.17,443/- per annum, after which the net income comes to Rs.2,99,699/- (rounded off to Rs.2,99,700/-).

Thereafter, a $\frac{1}{3}^{\text{rd}}$ deduction towards the personal living expenses of the deceased is to be applied, in terms of the ratio of the judgment of the Supreme Court in *Sarla Verma's* case (supra), as was correctly applied by the Tribunal, thereby making the annual loss of dependent income to the widow and mother of the deceased to be Rs.1,99,800/-

18. The contention of learned counsel for the appellants that a 50% rather than a $\frac{1}{3}^{\text{rd}}$ deduction towards his personal living expenses should be applied, is wholly erroneous, in view of the law laid down in the aforesaid judgment, which holds that where the number of dependents upon the deceased was 2 to 3, a $\frac{1}{3}^{\text{rd}}$ deduction towards his personal living expenses is to be applied.

Though the contention of Ms. Kariyal is otherwise not illogical, inasmuch as since the father and sisters of the deceased, i.e. respondents

No.2 to 4 in FAO No.4786 of 2012, cannot be held to be dependent upon the deceased, the deduction towards the personal expenses of the deceased, from his income, should be increased; however, firstly, the mother and widow of the deceased in any case being accepted to be dependent upon him, a 1/3rd deduction is to be applied towards the deceaseds' personal expenses as per the ratio of *Sarla Vermas'* case. Of course, if the rationale is to be carried to its logical conclusion, then, the father being an earning hand, and therefore, only the widow of the deceased being dependent upon the deceased, a 50% deduction towards his personal expenses may need to be made. However, considering that no amount has been awarded to the father and sisters of the deceased, i.e. respondents No.2 to 4 in FAO No.4786 of 2012, towards the loss of love and affection of their son/brother, the contention of learned counsel in that regard is rejected.

19. To the aforesaid loss of annual dependent income of the mother and widow of the deceased, a multiplier of 17 is to be applied, again as per the ratio of the aforesaid judgment, thereby bringing the total loss of dependent income to the mother and widow to be Rs.33,96,600/- and not Rs.35,94,276/- as assessed by the Tribunal.

However, though these are not appeals by the claimants, deduction in compensation already awarded, has to be very carefully weighed by the Court and consequently, it is to be seen as to whether any other compensation is payable to the claimants, as was not awarded by the Tribunal.

As already noticed, the Tribunal simply awarded Rs.5000/- towards funeral expenses, Rs.5000/- towards loss of estate and Rs.5000/-

towards loss of consortium to the widow of the deceased.

As per law settled in *Sarla Vermas'* case (supra), **Rajesh and others vs. Rajbir Singh and others** (2013)(9) SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013)(7) SCC 476, constantly followed thereafter, actually Rs.25,000/- is payable towards the funeral expenses and last rites of the deceased, Rs.1,00,000/- is payable by way of loss of consortium to the widow, and at least Rs.50,000/- each is awardable to the parents of the deceased, for the loss of love and affection of their son, and at least half that sum, i.e. Rs.25,000/- each, would be payable to the sisters of the deceased, as were claimants before the Tribunal.

Thus, if the aforesaid sums are awarded, another Rs.2,75,000/- would be payable to the different claimants.

So calculated, the total compensation payable to the claimants would work out to Rs.36,71,600/- and not Rs.36,09,276/- as awarded by the Tribunal.

20. However, despite reliance of the learned counsel for the respondents on the judgment of the Supreme Court in *APSRTC's'* case (supra), in the opinion of this Court, in the circumstances aforesaid, these appeals not being those of the claimants, enhancement of Rs.62,324/- is not called for, in an appeal filed by the insurance company; but, obviously, in view of the fact that actually slightly more compensation, than was awarded by the Tribunal, is actually payable to the respondent-claimants, there is, consequently, no ground at all to interfere in the total amount of compensation already awarded by the Tribunal.

21. As regards the contention that the family pension of Rs.6275/-,

being received by respondent No.1 (in FAO No.1451 of 2012) should be deducted while calculating the loss of dependent income to her, that aspect has also been considered by their Lordships of the Supreme Court in **Lal Dei and others v. Himachal Road Transport Corporation and others** (2007) 8 SCC 319. Citing **Ms. Helen C. Rebello and others v. Maharashtra State Road Corporation and another** (1999) 1 SCC 90, it was held that family pension payable to the widow of a victim of a motor vehicle accident is not to be deducted while calculating the loss of dependent income to the widow. Hence, that contention on behalf of the appellant, is also rejected.

22. Hence, I find no merit in these appeals which are dismissed, but with no order as to costs.

July 18, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE