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

**FAO No. 6293 of 2011
Date of decision : April 22, 2016.**

Neelam and others

.... Appellants

Vs.

Raj Kumar and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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

Present : Mr. S.K.Yadav, Advocate,
for the appellants.

Service of respondent No.1 already dispensed with, vide order dated 13.10.2014.

Respondent No.2 proceeded against *ex-parte.*

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AMOL RATTAN SINGH, J.

1. This is an appeal filed by the claimants before the learned Motor Accident Claims Tribunal, Narnaul, seeking enhancement of Rs.3,94,400/- awarded to them as compensation for the death of Vinod Kumar. The said Vinod Kumar was the husband of appellant No.1, the father of appellant No.2 and son of appellants No.3 and 4.

2. The facts, as taken from the impugned Award, dated 31.01.2011, are that on 22.09.2009, Vinod Kumar and Vikram Singh were returning to their village on a motorcycle bearing registration No.HR-35D-1209. When they reached near Balaji Udyog, Nizampur Road, Narnaul, at about 9:00 p.m., a tractor bearing registration No.HR-35E-6195, driven by respondent No.1

allegedly in a rash and negligent manner, came from the opposite side and collided with the motorcycle. Both the riders on the motorcycle fell down and Vinod Kumar, due to the multiple injuries received by him, was taken to General Hospital, Narnaul, from where he was taken to Kailash Hospital, Behrod. He was admitted there but unfortunately expired on 23.09.2009.

FIR No.309, dated 23.09.2009, was also registered against respondent No.1 in P.S. City Narnaul, for the commission of offences punishable under Sections 279/304-A IPC.

3. It was claimed by the appellants-claimants that Vinod Kumar was running Yadav Coaching Centre and was earning Rs.10,000/- per month and that all the claimants were dependent upon his earnings.

Upon notice issued, respondents No.1 and 2, i.e. the driver and owner of the tractor, filed a written statement denying that respondent No.1 was driving the tractor on the date of the alleged accident and that the tractor, being insured with respondent No.3, the claim petition had been filed against them only to obtain compensation from the Company and further, that even the FIR had been registered in collusion with the police.

4. The insurance company (respondent No.3) filed a separate written statement, also denying the accident and further stating that respondent No.1 in any case was not holding a valid driving licence on the said date.

5. The two main issues framed by the Tribunal were as to whether Vinod died in a road side accident which took place on the aforesaid date and time with the tractor in question, driven by respondent No.1, and if so, the amount of compensation that the claimants would be entitled to.

6. Appellant No.1, Smt. Neelam, widow of the deceased testified as

PW1, Vikram Singh, the pillion rider with deceased Vinod Kumar testified as PW2 and Pushkar Dutt, Assistant Criminal Ahlmad in the Court of the Chief Judicial Magistrate, Narnaul, testified as PW3.

The respondents, on the other hand, did not led any evidence in their defence.

7. After appraisal of the evidence, including the testimony of PW2 Vikram Singh, the learned Tribunal held that the accident was caused on account of the negligence of respondent No.1, due to which Vinod Kumar received injuries and died as a result of those injuries.

There is no appeal filed by the respondents, against that finding.

8. As regards compensation, the learned Tribunal found that no documentary proof of the deceased having earned Rs.10,000/- per month was produced and consequently, his income was held to be Rs.3600/- (seemingly assessed as per daily wages of a skilled worker), of which he was held to have spent 1/3rd on himself with the remaining Rs.2400/- being held to be the loss of income to the appellants-claimants. Accordingly, the annual dependency was worked out to Rs.28,800/- to which a multiplier of 13 was applied, taking the age of the deceased to be 32 years, based on the stand of appellants-claimants. Consequently, the total loss of income was assessed as Rs.3,74,400/-, which was also held to be sufficient compensation for pain and suffering by the Tribunal. Additionally, a sum of Rs.10,000/- was awarded towards funeral expenses and another Rs.10,000/- by way of loss of consortium to appellant No.1.

9. Thus, the total compensation awarded, as already noticed, was Rs.3,94,400/-, to be equally divided amongst the claimants. Interest @ 9% per annum, running from the date of filing of the claim petition till the realization

of the compensation, was also awarded by the Tribunal.

Respondents No.1 to 3 were held to be jointly and severally liable to pay the compensation, with the contention of the insurance company that respondent No.1 was not carrying a valid driving licence, having been rejected.

10. Mr. S.K.Yadav, learned counsel for the appellants, submitted that firstly, the Tribunal had erred in applying a multiplier of only 13, having accepted the age of the deceased to be 32; and as a matter of fact, a multiplier of 16 should have been applied, in terms of the judgment of the Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121. He also submitted that the income assessed, of the deceased, was inadequate and that no loss of future prospects of income had been awarded to the appellant.

Learned counsel further submitted that the sum of Rs.10,000/- awarded by way of funeral expenses was extremely low, as the Supreme Court in various judgments, including **Sanobanu Nazirbhai Mirza and others v. Ahmadabad Municipal Transport Service,** 2013 (4) RCR (Civil) 732, **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 has held that Rs.25,000/- is to be awarded towards the last rites and funeral expenses of the deceased is to be awarded.

Mr. Yadav further submitted that the amount awarded to appellant No.1 towards loss of consortium (Rs.10,000/-), was also against the ratio of the aforesaid judgments, in all of which Rs.1,00,000/- had been awarded to the spouse of the deceased.

Further, he submitted that no amount having been awarded to appellant No.2, i.e. the minor daughter of the deceased, for loss of love & affection, care and guidance of her father, is also an error committed by the Tribunal, which also did not award any amount to appellants No.3 and 4 for the loss of love and affection of their son.

11. On the other hand, learned counsel for the contesting respondent, i.e. the insurance company, submitted that the income of the deceased was correctly assessed, in view of the fact that no evidence of his having earned higher than Rs.3600/- per month was ever led by the appellants.

As regards the loss of future prospects of income, Ms. Vandana Malhotra, referred to the order of the Supreme Court in **National Insurance Co. Ltd. v. Pushpa,** (2015) 9 SCC 166, wherein the issue of loss of future prospects of income, in a case where the deceased was not in a permanent job on a fixed salary, has been referred to a larger Bench, on the ground that the judgment in Rajesh v. Rajbir (supra), did not consider the earlier judgment in **Reshma Kumari v. Madan Mohan** (2013) 9 SCC 65, wherein the Tribunals were directed to follow para 24 of *Sarla Vermas' case* (supra). In *Sarla Vermas' case,* loss of future prospects of income were awarded only in cases where the deceased was a salaried employee.

As regards the other contentions raised by the learned counsel for the appellant, on loss of consortium, love and affection and towards funeral expenses, learned counsel for respondent No.3 obviously could not deny the ratio of the judgments cited by counsel for the appellants.

12. Having considered the arguments and having perused the impugned Award of the learned Tribunal, the contention of learned counsel for the appellants merits acceptance with regard to grant of higher compensation towards loss of consortium to appellant No.1 and for grant of

adequate compensation to appellants No.2, 3 and 4. Similarly, his contention with regard to higher compensation towards the last rites and funeral expenses of the deceased, is also unexceptionable, in terms of the ratio of the judgments in *Sanobanu, Rajesh v. Rajbir and Vimal Kanwars' cases* (supra).

13. Consequently, Rs.25,000/- is awarded to the appellants towards the funeral expenses and last rites of the deceased. Rs.1,00,000/- in all is awarded to appellant No.1 towards loss of consortium, i.e. Rs.90,000/- over and above what was the awarded by the Tribunal.

As regards appellant No.2, i.e. the minor daughter of the deceased, though her age is not disclosed, however, seeing that the deceased was only 32 years of age, obviously she could not be expected to be more than 8 to 12 years of age at the most, at the time of her fathers' death. Consequently, a sum of Rs.1,50,000/- is awarded to her for the loss of love & affection, care and guidance of her father.

In this regard, it is to be noticed here that in *Sanobanus' case,* the hon'ble Supreme Court awarded Rs.1,00,000/- for care and guidance of minor children, which was also so in *Rajesh v. Rajbirs' case.* However, in *Vimal Kanwars' case*, a sum of Rs.2,00,000/- was awarded to the minor daughter of the deceased. This Court has, consequently, been awarding Rs.1,00,000/- to Rs.1,50,000/- to the minor children of the deceased, where they are shown to be below 15 years of age, especially in the case of a daughter.

14. As regards the parents, no doubt, the father (appellant No.4) would not be entitled to get compensation on account of loss of any income of the deceased, unless he was wholly dependent upon the deceased, which is not shown to be the case here. However, in my opinion, both the parents would be equally entitled to compensation for the loss of love and affection of

their son and consequently, both appellants No.3 and 4 are held entitled to Rs.50,000/- each, which though not adequate, is a sum which is being awarded by this Court in all cases, to parents.

15. As regards the loss of actual income to the appellants, I agree with the learned counsel for respondent No.3, that in the absence of evidence led to the contrary, there is no reason to differ with the finding of the Tribunal that the deceased could not have been earning more than Rs.3600/- per month.

Further, with the number of dependents upon the deceased being three (the father not to be taken as a dependent as per the settled law, unless shown to the contrary), the 1/3rd deduction applied by the Tribunal, is also correct.

However, I agree with the learned counsel for the appellant that the multiplier of 13 applied, with the age of deceased being only 32 years old, was erroneous in terms of the judgment in *Sarla Vermas'* case. Consequently, a multiplier of 16 is to be applied to the annual dependent income of Rs.28,800/-. Therefore, the total loss of income to the appellants comes to Rs.4,60,800/- and not Rs.3,74,400/-. Thus, under this head, the enhanced amount of compensation comes to Rs.86,400/-, which would be disbursed equally amongst appellants No.1 to 3.

16. Coming to the loss of future prospects of income, since the law in that regard is not fully settled, as regards those cases where the deceased was not on a fixed salary, therefore, it would be appropriate to calculate the sum awardable, in case the judgment of the Supreme Court (larger Bench) comes in favour of the claimants. However, till the decision thereof, the sum calculated would not be disbursed to the appellants.

Consequently, in terms of the law laid down in *Rajesh v. Rajbir* *and Vimal Kanwars' cases*, respondent No.3 is directed to deposit a sum of Rs.2,30,400/- before the learned MACT, Narnaul, alongwith interest @ 7.5% on that sum, running from the date of filing of the claim petition till the date of deposit with the learned Tribunal. The Tribunal would thereafter immediately have the said amount deposited in a fixed deposit in a nationalized bank carrying maximum interest. In case the judgment of the Supreme Court holds that loss of future prospects of income are to be awarded in all cases, regardless or salaried or non-salaried income, the appellants would be entitled to the disbursement of the aforesaid sum of Rs.2,30,400/- alongwith the interest, in the same manner as they would get an Award of the Tribunal executed, with no further reference to this Court.

Similarly, if the judgment of the Supreme Court holds that loss of future prospects of income are not to be awarded in such like cases, the insurance company (respondent No.3) would be entitled to apply to the Tribunal for refund of the said amount, alongwith interest accrued thereupon in the bank.

16-A. It needs to be clarified here that the aforesaid sum of Rs.2,30,400/- has been calculated in terms of the ratio of the judgments in Sarla Vermas', *Rajesh v. Rajbir* and *Vimal Kanwars'* cases, wherein it was held that where the deceased was below 40 years of age, 50% of his last proved income is to be added to such income and thereafter, the appropriate deduction is to be applied towards the personal living expenses of the deceased (had he remained alive), in the same manner that such deduction is applied to the loss of income based upon his last proved income. Thereafter, the same multiplier as is awardable for loss of actual income, is also to be applied on the loss of future prospects of income to the claimants.

Consequently, the income of the deceased having been assessed by the Tribunal to be Rs.3600/- per month, 50% of that sum is to be added by way of loss of future prospects of income. Thus, 50% of that amount being Rs.1800/-, a 1/3rd deduction is to be made towards the living expenses of the deceased, thereby bringing the monthly loss of future prospects of income to the appellants-claimants, to be Rs.1200/- per month, or Rs.14,400/- per year. To the aforesaid sum, a multiplier of 16 is to be applied, thereby bringing the total loss of future prospects of income to appellants No.1 to 3 to be Rs.2,30,400/-.

That is the sum, alongwith interest accruing thereupon as directed above, that would be deposited by respondent No.3 with the Tribunal, which would thereafter, immediately, get that sum deposited in a fixed deposit.

17. Presently, the appellants are held entitled to compensation as below:-

i)	Towards loss of income	Rs.4,60,800/-
ii)	Towards loss of consortium to appellant No.1	Rs.1,00,000/-
iii)	Towards loss of love and affection, care and guidance of her father (to appellant No.2)	Rs.1,50,000/-
iv)	Towards loss of love and affection of their son (to appellants No.3 and 4)	Rs.50,000/- each is =1,00,000/-
v)	Funeral expenses	Rs.25,000/-
	Total	Rs.8,35,800/-

18. Thus, the total enhanced amount of compensation, which is to be presently disbursed to the appellants, in terms of this judgment, is Rs.4,41,400/-, (the Tribunal having awarded Rs.3,94,400/-). Of this enhancement, Rs.1,62,500/- would be disbursed to appellant No.1,

Rs.1,58,200/- would be paid to appellant No.2, Rs.50,000/- would be paid to appellant No.3 and Rs.62,500/- to appellant No.4.

The aforesaid apportionment has been calculated in a manner to ensure that the funeral expenses of Rs.25,000/- are divided equally amongst appellants No.1 and 4, i.e. widow and father of the deceased and compensation of loss of income is largely given to appellant No.1, with the remaining amount under that head equally distributed between appellants No.2 and 3. The remaining individual amounts, are in terms of what has been awarded towards loss of consortium and loss of love and affection to each appellant respectively.

The aforesaid enhanced amount of Rs.4,60,800/- shall carry interest @ 7.5% per annum.

The appeal is accordingly allowed as above.

19. To repeat at the end, the aforesaid amount shall be immediately disbursable in the manner given above, with the amount calculated as compensation payable towards loss of future prospects of income, to be deposited by respondent No.3 alongwith interest @ 7.5% per annum, from the date of filing of the claim petition, till the date of deposit with the Tribunal. That amount would be disbursable to the appellants or refunded to respondent No.3, dependent upon the judgment of the hon'ble Supreme Court, as discussed in paragraph 16 hereinabove.

No order as to costs.

(AMOL RATTAN SINGH)
April 22, 2016 **JUDGE**
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