IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 16.5.2016

(1) FAO No.2522 of 2012 (O&M)

Krishna Devi and another

...Appellants

versus

Sukhvinder Singh and others

...Respondents

(2) FAO No.2875 of 2012 (O&M)

Kavita and others

...Appellants

versus

Sukhvinder Singh and others

...Respondents

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

Present: Mr.K.S.Dhanora, Advocate,
for the appellants.
Mr.Neeraj Khanna, Advocate,
for the respondent-Insurance Company.

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

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AMOL RATTAN SINGH, J. (ORAL)

CM No.11010-CII of 2012 in FAO No.2522 of 2012, and
CM No.12520- CII of 2012 in FAO No.2875 of 2012

By these applications, the appellants-applicants seek condonation of the delay of 15 days (in FAO No.2522 of 2012) and 77 days (in FAO No.2875 of 2012) in filing the appeals.

For the reasons mentioned in paragraphs 2, 3 and 4 of both the applications, the delay of 15 days (in FAO No.2522 of 2012) and 77 days (in FAO No.2875 of 2012) in filing the appeals is condoned.

The applications are allowed.

FAO No.2522 of 2012 and
FAO No.2875 of 2012

1. These are two appeals filed by the claimants in two claim petitions, bearing Nos.80 and 81 of 2010, seeking enhancement of the compensation awarded to them by the learned Motor Accident Claims Tribunal, Jind, on account of the deaths of Sumer Singh (in FAO No.2522 of 20120, and Jora Singh (in FAO No.2875 of 2012). The deaths of these two persons occurred in the same accident that took place on 16.6.2010.

The facts, as taken from the impugned common award of the learned Tribunal, are that the aforesaid two persons are stated to have been returning home to Village Mator from Narwana, on a motorcycle bearing registration No.HR-32-A-4619 , being driven by Sumer Singh. At about 2.30 pm, in the area of Village Dumar Khan Khurd, a Tata vehicle bearing registration No.PB-10-CR-0893, being driven by respondent No.1 herein, allegedly in a rash and negligent manner, came from the opposite side of the road. Sumer Singh is stated to have lowered the speed of the motorcycle, taking it to the extreme left of the road, but the other vehicle still hit his motorcycle. Due to this, both the riders of the motorcycle were thrown on the other side of the road and were crushed under a Mohindra Arjun Tractor 605D1, bearing Engine and Chasis No.3248, which at that time had not been registered but was later allotted registration No.HR-22-F-6063. The said tractor was being driven by respondent No.4 herein and due to the accident, Sumer Singh and Jora Singh, both, died on the spot. The accident is stated to have been witnessed by several persons, including one Himmat Singh, pursuant to which FIR No.84 was registered at Police Station Sadar, Narwana, on the same date, i.e. 16.6.2010, for the alleged commission of offences punishable under Sections 279/304-A/427 IPC.

A report under Section 173 Cr.P.C. is stated to have been later filed against both, respondents No.1 and 4.

Consequently, negligence was alleged in the claim petitions, by both sets of the claimants, against the drivers of both the aforesaid vehicles, i.e. respondents No.1 and 4.

2. Sumer Singh and Jora Singh were stated to have been 22 and 25 years of age respectively, employed in a poultry farm on a monthly salary of Rs.6,000/- each. Claim Petition No.80 (presently corresponding to FAO No.2522 of 2012) was filed by the parents of Sumer Singh, claiming Rs.10,00,000/- as compensation and Claim Petition No.81 (presently corresponding to FAO No.2875 of 2012) was filed by the widow and parents of Jora Singh, claiming a compensation of Rs.20,00,000/-.

3. Upon notice issued, respondent No.1 completely denied the involvement of the Tata vehicle driven by him, in the accident in question, whereas the insurance company (respondent No.3), with whom the Tata vehicle was insured, also denied the contents of the claim petition, other than stating that respondent No.1 was not holding a valid and effective driving licence and that there was a contravention of the terms and conditions of the insurance policy.

Respondents No.4 and 5, i.e. the driver and owner of the tractor, though admitted the accident in their written statement, however, stated that it had taken place due to the negligence of the motorcycle driver and the driver of the Tata vehicle. The insurance company with which the tractor was insured, i.e. respondent No.6, also stated that the accident took place due to the negligence of respondent No.1 and further, that the tractor was being driven in contravention of the terms and conditions of the insurance policy and that respondent No.4 was not holding a valid and effective driving licence.

4. Upon the aforesaid pleadings, both the claim petitions having been consolidated to be heard together, common issues were framed on the question of negligence in causing the accident, the amount of compensation payable, if any, and liability to pay the same, and further as to whether the driver of the tractor was holding a valid and effective driving licence or not.

5. On the basis of the evidence led, the learned Tribunal came to the conclusion that it was, actually, respondent No.1, i.e. the driver of the Tata vehicle bearing registration No. No.PB-10-CR-0893, who was responsible for causing the accident and accordingly, decided the issue against the said respondent.

No appeal filed by respondents No.1 to 3, i.e. the driver, owner and insurer of the said vehicle, against the said finding of the learned Tribunal, has been brought to the notice of this Court.

It may also be noticed here that since the liability of the insurance company, i.e. present respondent No.3, to indemnify the insurer and as such to pay any enhanced compensation, was not in issue, there being no appeal by the company against the findings of the learned Tribunal, including fastening of the liability, notice was issued only to the said respondent, i.e. the insurance company, when the case had initially came up for hearing before this Court four years ago.

6. Coming, therefore, to the issue of compensation awarded and its adequacy/inadequacy. For that purpose, these appeals are dealt with separately from here onwards.

FAO No.2522 of 2012

7. In respect of the death of Sumer Singh, though his mother, present appellant No.1 in this appeal, testified that her son was 22 years of age and was earning Rs.6,000/- per month as an employee of a poultry farm, no evidence in that regard was led and, consequently, his income was assessed as that of a casual labourer, at Rs.4,000/- per month or Rs.48,000/- annually. Since he was unmarried, a 50% deduction was applied towards his personal expenses, thereby making the annual loss of dependent income to the claimants to be Rs.24,000/-.

The learned Tribunal thereafter held that the multiplier would be applied as per the age of the father of the deceased, which was conjectured to be 50 years, on the ground that the mother of deceased Sumer Singh stated that she was 40 years old. Therefore, a multiplier of '11' was applied and a total compensation of Rs.2,64,000/- was awarded to the appellants-claimants.

8. Mr. K.S. Dhanora, learned counsel for the appellants, submitted before this Court, that firstly, the learned Tribunal had wholly erred in applying a multiplier taking the age of the father to be the basis for so applying it. Actually, it is the age of the deceased which is to be taken into consideration and his age being 22 years at the time of his death, the multiplier should have been '18'.

He further submitted that no amount, whatsoever, has been awarded to the appellants for the loss of love and affection of their son, towards funeral expenses and towards loss of future prospects of income. He, therefore, submitted that compensation deserves to be enhanced on all these counts.

In support of his arguments, he has relied upon a judgment of the hon'ble Supreme Court in Munna Lal Jain and another vs. Vipin Kumar Sharma and others, (2015) 6 SCC 347, to submit that the multiplier in the case of the death of a bachelor is to be applied in reference to the age of the deceased and not the dependents.

On the issue of payment of compensation to the parents, towards loss of love and affection and funeral expenses and last rites, learned counsel relied upon a judgment in Rajesh and others vs. Rajbir Singh and others, (2013) 9 SCC 54, wherein the mother of the deceased had been awarded compensation of Rs.1,00,000/-. Funeral expenses of Rs.25,000/- had also been awarded in the said judgment.

9. Mr. Neeraj Khanna, learned counsel appearing for respondent No.3, submitted that as regards future prospects of income, the issue being under consideration of the hon'ble Supreme Court, before a larger Bench, having been referred to such Bench in National Insurance Company Limited vs. Pushpa, (2015) 9 SCC 166, no compensation on that count would be payable, the deceased admittedly not having been proved to be in any permanent salaried employment.

As regards the issue of compensation for loss of love and affection and funeral expenses, and on the issue of multiplier, though he submitted that the learned Tribunal was not in error in awarding compensation only to the extent that it had, he, naturally, could not refute the ratio of the law laid down by the Supreme Court, in respect of such compensation being payable.

10. Having considered the arguments of learned counsel, in the opinion of this Court, the appeal deserves to be partly allowed.

Firstly, undoubtedly the parents of the deceased are entitled to compensation towards loss of love and affection of their child (major or minor), if he was snatched away from them in a motor vehicle accident, due to the negligence of another person. Again undoubtedly, the hon'ble Supreme Court in Rajeshs' case (supra), had awarded Rs.1,00,000/- to the mother of the deceased, though in that case, the other claimants were his widow and daughter.

This Court, conventionally therefore, has been awarding Rs.50,000/- each where both the parents of a deceased victim in a motor vehicle accident are claimants. Accordingly, the appellants are awarded the aforesaid sum of Rs.50,000/- each by way of compensation towards the loss of love and affection of their son, even though the said sum would otherwise be wholly inadequate.

As regards funeral expenses and last rites, in the aforesaid judgment, as also in case Vimal Kanwar and others vs. Kishore Dan and others, (2013) 7 SCC 476, followed by subsequent judgments, a sum of Rs.25,000/- had been awarded by the Apex Court under that head. Consequently, appellant No.2, i.e. the father of the deceased, is held entitled to a compensation of Rs.25,000/- under that head.

11. As regards application of an appropriate multiplier, in Munna

Lals' case (supra), it was held by their Lordships, after considering the law on the issue, that in the case of a deceased bachelor, after applying a cut of 50% on his income towards his personal expenses, had he remained alive, the multiplier to be applied to the remaining dependent income, of the claimants, would be as per the age of the deceased and not the age of the dependents.

Consequently, in the present case also, the same principle is to be applied, in view of the law laid down.

In the present case, though the deceased was stated to be 22 years old, the learned Tribunal held that there was no proof with regard thereto, his birth certificate not having been produced in evidence. However, since the multiplier was applied by the learned Tribunal with reference to the age of the father of the deceased, i.e. present appellant No.2, the issue of the deceaseds' age was not further gone into. Therefore, this Court is, obviously, required to go into that issue, the multiplier, as held above, being directly related to his age.

It is noticed that there is no reference to any postmortem report or any certificate of birth or educational qualification of the deceased, in the award of the learned Tribunal. Hence, this Court can only go by the circumstance and other evidence on record to determine the age of the deceased. As per the claim petition, as noticed even in the award, the deceased was 22 years of age, which was also testified to by his mother, appellant No.1, when she examined herself as PW2. There is no other evidence on record with regard to the age of the deceased.

Further, considering that he was a bachelor and was travelling with a friend, Jora singh, I see no reason to disbelieve that he was in the same age group as Jora Singh, whose age was proved to be 25 years. The multiplier to be applied in a case where a deceased was between 15 to 25 years is the same, i.e. '18', as per the law laid down in Sarla Verma vs. Delhi Transport Corporation, (2009) 6 SCC 121. Consequently, whether deceased Sumer Singh was 22 years old, or a few years younger or upto the age of 25 years, it actually makes no difference, unless he was beyond 25 years of age. He being a resident of a village and unmarried, the presumption would be that he was within the age group of 20 to 25 years, read with the testimony of his mother and the age given in the claim petition.

Though the matter could have been remanded to the learned Tribunal to determine this issue, however, since at best it could make a difference of application of a multiplier perhaps one 'degree lesser', the matter is not being prolonged unnecessarily and he is held to be within the age group of 20 to 25 years, in the circumstances given above, i.e. his age given in the claim petition, as testified to by his mother and the fact that he was unmarried and was travelling with presumably a friend, who admittedly was 25 years of age.

12 As regards the income assessed by the learned Tribunal, of Rs.4,000/- per month, I see no error in that assessment and, as a matter of fact, the said issue was not even pressed much by the learned counsel, in view of the fact that the minimum wage notified by the Haryana Government w.e.f. 1.1.2010, was Rs.4,214/-. Hence, an approximation of Rs.4,000/- is not found to be faulty.

Therefore, after deducting 50% of that amount towards the personal expenses of the deceased, he being a bachelor, the annual dependent income of the appellants-claimants comes to Rs.24,000/-. A multiplier of 18 is to be applied to that amount, after which the loss of dependent income to the appellants-claimants comes to Rs.4,32,000/- and is accordingly awarded.

13. Coming to the last issue of loss of future prospects income, I agree with the learned counsel for the respondent-insurance company, that the deceased not having been proved to be employed in a permanent salaried job, even though it was contended so, no loss of future prospects of income can be awarded to the appellants-claimants at this stage, the matter being sub-judice before their Lordships, in view of the fact that in the judgment by which the loss of future prospects of income was held payable, i.e. Rajeshs' case (supra), the earlier judgment in Reshma Kumari vs. Madan Mohan, (2013) 9 SCC 65 had not been brought to their Lordships' notice. Consequently, a reference was made to a larger Bench, in Pushpas' case (supra).

However, this Court, to give finality to the proceedings, i.e. to the appeals against Awards of Tribunals, has been calculating the possible loss of future prospects payable, in case the judgment of the Supreme Court (larger Bench) holds that such compensation is payable in all cases. Accordingly, the needful is done even in the present case as follows.

14. The deceased being less than 40 years of age, 50% of his assessed income is to be taken as the basis for calculating the loss of future prospects of income, in terms of the judgment in Sarla Vermas' case (supra). Accordingly, his annual income being Rs.48,000/-, 50% of the same comes

to Rs.24,000/-. 50% of that amount is to be further deducted towards his personal living expenses, thereby coming to a sum of Rs.12,000/-, to which again a multiplier of 18 is to be applied, to come to the final amount of loss of future prospects of income payable to his parents. On this calculation, the total loss of future prospects of income to the appellants-claimants, in case it is eventually held payable, is Rs.2,16,000/-.

The insurance company would deposit the aforesaid sum of Rs.2,16,000/-, along with interest @ 6% per annum, running from the date of filing of the claim petition, till the date of deposit of the aforesaid sum with the learned Motor Accident Claims Tribunal, Jind. The learned Tribunal would further have the deposit made by the insurance company deposited in a fixed deposit carrying maximum interest, in a nationalised bank, immediately thereafter. If the ratio of the judgment of the Supreme Court in Pushpas' case (supra), is to the effect that such loss of future prospects of income are payable to the claimants of deceased victims who were not in permanent salaried employment, then the present appellants would be entitled to get the aforesaid amount, along with all interest that would have accrued thereupon in the fixed deposit, disbursed to them in the same manner as an award of the Tribunal is executed.

Similarly, in case the ratio of the judgment of the Supreme Court is to the effect that claimants in such like cases are not entitled to compensation for loss of future prospects of income, then the insurance company would be entitled to get the entire amount refunded, along with interest that has accrued thereupon in the fixed deposit, by making an application to that effect to the learned Tribunal.

15. Finally, thus, other than the loss of future prospects of income, the following compensation is now awarded to the appellants-claimants:-

i)	Towards loss of income (to appellant No.1)	Rs.4,32,000/-
ii)	Towards loss of love and affection to both the appellants	Rs.50,000/- each
iii)	Towards expenses for funeral and last rites (to appellant No.2)	Rs.25,000/-
	Total:	
	Rs.5,57,000/-	

Thus, the enhanced compensation now awarded (other than loss of future prospects of income), to the appellants, is Rs.2,93,000/- (Rs.5,57,000/- minus Rs.2,64,000/-).

The aforesaid enhanced amount would carry the same rate of interest on it, i.e. 7.5% per annum, as was awarded by the learned Tribunal.

<u>FAO No.2875 of 2012</u>

16. As already noticed, in this appeal, the appellants-claimants are the widow and parents of deceased Jora Singh, who again was stated to be earning Rs.6,000/- per month as salary from a poultry farm and was aged 25 years at the time of his unfortunate death. Further again in this case, the said income was never proved and, consequently, he too was held to be earning Rs.4,000/- per month, as a daily wager.

Thus, taking the annual income to be Rs.48,000/-, a deduction of 1/3rd of that income was made by the Tribunal towards the personal expenses of the deceased, thereby leaving the dependent income of his family to be Rs.32,000/- per annum. A multiplier of '16' was applied accepting his age to be 25 years, in terms of what was recorded on the post mortem report. The total loss of income to the appellants-claimants was thus held to be Rs.5,12,000/-.

Another Rs.10,000/- was awarded on account of expenses on the last rites of the deceased, as also on account of loss of love and affection, thereby bringing the total compensation awarded to the appellants to Rs.5,22,000/-.

17. Having considered the above, and contention of learned counsel for the parties, as regards the income of the deceased, for the same reasons as recorded in the connected appeal, there is no reason to interfere with that finding of the Tribunal.

He having three dependents, i.e. his widow and parents, a 1/3rd deduction towards his personal expenses was applied by the learned Tribunal, which again requires no reference with, in terms of the ratio of Sarla Vermas' case (supra) and, accordingly, the loss of annual dependent income of the appellants-claimants was correctly assessed by the learned Tribunal as Rs.32,000/-.

18. However, though the learned Tribunal accepted the age of deceased Jora Singh to be 25 years, on the basis of the postmortem report, the multiplier applied was 16 and not 18, as should have been in terms of the ratio of Sarla Vermas' judgment. Accordingly, the said multiplier, i.e. 18, is applied to the loss of dependent income of Rs.32,000/-, thereby coming to a total loss of dependent income to the appellants, of Rs.5,76,000/-.

19. The appellants-claimants were awarded a consolidated sum of Rs.10,000/- towards loss of love and affection and expenses incurred on the last rites of the deceased. Obviously, the aforesaid amount is not in consonance with the ratio of the law on the subject, as already discussed.

Accordingly, in terms of the judgment in Rajeshs' case and Vimals' case (supra), a sum of Rs.1,00,000/- is awarded towards loss of consortium to appellant No.1, i.e. the widow of the deceased, and Rs.50,000/- each is awarded to appellants No.2 and 3 for the loss of love and affection of their son. Rs.25,000/- is also awarded to appellant No.3, towards funeral expenses and last rites of the deceased.

20. On the same analogy, as given in FAO No.2522 of 2012, future prospects of income would only be disbursed to the appellants herein if the ratio of the judgment of the hon'ble Supreme Court holds that it is so disbursable in such cases.

The calculation for the same, if eventually payable, but to be now deposited by the insurance company, along with interest @ 6% per annum, running from the date of filing of the claim petition till the date of deposit with the learned Tribunal, is as given herein after.

The annual income of the deceased being Rs.48,000/- and he also being below 50 years of age, his income for the purpose of calculating the loss of future prospects is to be taken as 50% of the aforesaid sum, i.e. Rs.24,000/-, to which a deduction of 1/3rd is to be applied towards his personal living expenses, thereby making the annual loss of future prospects of income to the appellants to be Rs.16,000/-. To that amount, a multiplier of 18 is to be applied, thereby making the total loss of future prospects of income to be Rs.2,88,000/-.

Thus, that is the sum which would be deposited with the learned Tribunal by the insurance company, along with interest @ 6% per annum as aforesaid, to be eventually either disbursed to the appellants or refunded to the insurance company, depending upon the ratio of the judgment of the hon'ble Supreme Court in Pushpas' case (supra).

As already held in the other appeal, i.e. FAO No.2522 of 2012, the learned Tribunal is directed to have the aforesaid sum of Rs.2,88,000/- deposited in a fixed deposit carrying maximum interest in a nationalised bank, immediately upon the deposit being made by the insurance company with it.

21. Therefore, the compensation now awarded by this Court, (other than the loss of future prospects of income) is as follows:-

i)	Towards loss of income (to appellants No.1 and 2)	Rs.5,76,000/-
ii)	Towards loss of consortium (to appellant No.1)	Rs.1,00,000/-
iii)	Towards loss of love and affection to appellants No.2 and 3)	Rs.50,000/- each
iv)	Towards expenses for funeral and last rites (to appellant No.3)	Rs.25,000/-
	Total:	Rs.8,01,000/-

Hence, the compensation now awarded to the appellants is Rs.2,79,000/-, more than what was awarded by the Tribunal.

Of the aforesaid sum, Rs.1,32,000/- would be paid to appellant No.1, Rs.82,000/- to appellant No.2 and Rs.65,000/- to appellant No.3.

The enhanced amount of Rs.2,79,000/- would again carry an interest @ 7.5% per annum, running from the date of filing of the claim petition till the date of realisation thereof.

Both the appeals are accordingly partly allowed, with no order as to costs.

16.5.2016 **(AMOL RATTAN SINGH)**
pk **JUDGE**