

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 6595 of 2011 (O&M)
Date of Decision : 27.05.2016

Usman and others

.....Appellants

Versus

Ahmad and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Salim Ahmed, Advocate
for the appellants.

None for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal filed by claimants seeking enhancement of compensation for death of Ikbal (later referred to as 'the deceased') father of claimants-appellants no. 4 to 6, husband of claimant-appellant no. 3 and son of claimants-appellants no. 1 and 2, in a motor vehicle accident with truck bearing registration No. RJ-14-GA-0505 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal is seeking of enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. Case of claimants, in brief, is that on 03.08.2009, the deceased was coming from Ferozepur Jhirka on a motorcycle being driven by Saleem. When they reached ahead of village Jatka Siswana, the offending vehicle hit the motorcycle resulting in serious injuries to the deceased, who was taken to Government Hospital, Mandikhera and then referred to Government Hospital, Gurgaon. He was being taken to Alwar but succumbed to his injuries on the way.

which was computed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Age of the deceased Ikbal	20 years
(ii)	Income of the deceased	₹4200 per month
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased	₹4200-₹1050 = ₹3150 per month
(iv)	Compensation after multiplier of 18 is applied	(₹3150X12X18) = ₹680400
(v)	Loss of consortium	₹5000
(vi)	Funeral expenses	₹5000
<i>Total</i>		₹690400

5. Learned counsel for the appellant has argued that the deceased was a dynamic young man and was selected in Indian Army but could not join his duty due to his death. The Tribunal despite evidence of this fact on record has ignored the same. PW-2 Subedar Arvinder Kumar Chaudhary has stated that the deceased was selected in the pay scale of ₹5200-20200+Grade Pay ₹2000+MSP ₹2000 and Dearness Allowance as per rules. As per observations in case of **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54**, claimants are also entitled to addition in income of he deceased towards future prospects. The Tribunal has not allowed any compensation for the loss of love and affection to children of the deceased, loss of estate, love and affection for parents of the deceased. The compensation allowed by the Tribunal for the loss of consortium and for funeral expenses is also on lower side.

6. Claimants have alleged that the deceased was in Indian Army but the fact proved on record is that he was selected in Indian Army vide selection letter issued in August, 2009 and was called to join his service in the month of October, 2009. Statement of PW-2 Subedar Arvinder Kumar Chaudhary to this effect is unrebutted. As the accident had taken place on 03.08.2009, the deceased could not join his post. In these circumstances, the Tribunal has

committed grave error by assessing income of the deceased as a daily wager.

On his selection in Indian Army, the deceased would have join as a Soldier (General Duty) and got the basic salary of ₹5200+Grade Pay ₹2000/- and D.A., which was 22% in January, 2009 (₹1584) and total salary of ₹8,784/- rounded off to ₹8800/-. As per observations in case of *Rajesh (supra)* and *Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447*, claimants are entitled to 50% addition in income of the deceased towards future prospects. Claimants no. 4 to 6, who are minor children of the deceased, are also entitled to compensation of ₹1 lac towards loss of love and affection care and guidance. As per observations of Apex Court in case of *Vimal Kanwar and others vs. Kishore Dan and others, 2013 (7) SCC 476*, claimants no. 1 and 2, who are parents of the deceased, are entitled to compensation of ₹1 lac towards loss of estate, love and affection. Amount of compensation awarded by the Tribunal towards loss of consortium and funeral expenses is also on lower side and is enhanced to ₹1 lac and ₹25,000/- respectively.

7. In view of my discussion above, the compensation to which claimants are entitled is tabulated as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Age of the deceased Ikbal	20 years
(ii)	Income of the deceased	₹8800
(iii)	50% of (ii) above to be added as future prospects	₹8800+₹4400= ₹13200 per month
(iv)	1/4 th of (iii) deducted as personal expenses of the deceased	₹13200-₹3300 = ₹9900 per month
(v)	Compensation after multiplier of 18 is applied	(₹9900X12X18) = ₹2138400
(v)	Loss of consortium for claimant no. 3- wife	₹100000
(vi)	Loss of love and affection care and guidance for claimants no. 4 to 6	₹100000
(vii)	Loss of estate, love and affection for claimants no. 1 and 2	₹100000
(vii)	Funeral expenses	₹25000
<i>Total</i>		₹2463400

8. As a sequel of my above discussion, the appeal is accepted. Award of the Tribunal is modified and compensation allowed to claimants is enhanced from ₹6,90,400/- to ₹24,63,400/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Amount of enhanced compensation shall be shared by claimants-appellants as follows:-

- (i) Parents of the deceased : 10% each
- (ii) Wife and children of deceased : 20% each

9. Respondent No. 3 being insurer of the offending vehicle will deposit the share of claimants-appellants no. 1 to 3 in their bank accounts or pay the same through demand drafts. The share of claimants-appellants No. 4 to 6, who as per claimants were minor, will be deposited in some nationalized bank as fixed deposits till the period they attain majority. It is, however, made clear that the bank may take the documents regarding age of the minors as required at the time of deposit of the amount and the minors shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their name after the date of their attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions, the bank usually give to bring the order of the Tribunal to get the payment even after attaining the age of majority. Claimant no. 3-Hanshira, being mother and natural guardian of minor claimants shall be entitled to get interest on the share of minor deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of their brought up. Counsel fee is assessed at ₹20,000/-.

May 27, 2016
jk

(SURINDER GUPTA)
JUDGE