IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

FAO No.2760 of 2012
Date of decision: 10.03.2016

Jaspal Kaur and another **... Appellants**

Versus

Balkishan and others **... Respondents**

<u>CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH</u>

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ishwar pal, Advocate
for the appellants.

None for respondent No.2.

Mr. Banni Thomas, Advocate
for respondent No.3.

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<u>AMOL RATTAN SINGH, J.</u>

1. This is an appeal filed by the claimants before the learned Motor Accident Claims Tribunal, Patiala, (in short the "Tribunal"), seeking enhancement of the compensation awarded to them on account of the death of Dalbir Singh, husband of appellant No.1 and father of appellant No.2.

The learned Tribunal, vide its award dated 04.01.2012, had awarded Rs.5,86,000/-, along with interest @ 7.5% per annum, to the appellants-claimants.

2. As per the facts given in the impugned award, the deceased was

working as a Forman on a harvester combine and in the month of October, 2010, had gone to Madhya Pradesh for harvesting crop, along with other employees. On 24.10.2010, when he was going on his motorcycle bearing registration no.PB-13G-7630, to purchase diesel for the combine, at about 11.30 p.m., then at Nehru Nikunj Betul, District Betul, Madhya Pradesh, a truck bearing registration no.HR-38Q-0354, came from the opposite side, driven by respondent No.1, and hit against the motorcycle of Dalbir Singh, who died on the spot. The motorcycle is also stated to have been badly damaged.

The deceased Dalbir Singh is stated to have been 44 years of age at that time and it was claimed that he was earning Rs.4,00,000/- per annum from his employer. He is also stated to have been cultivating his own 2 acres of land.

3. Upon notice, respondents No.1 and 2, i.e. the driver and owner of the 'offending vehicle', filed a single written statement and respondent No.3, i.e. the insurance company, filed a separate written statement, in both of which the factum of the accident was denied.

4. Issues with regard to the accident having taken place due to the rash and negligent driving of respondent No.1 and entitlement of any compensation to the appellants-claimants, with the third issue being the validity of the driving licence possessed by respondent No.1, were framed.

On the issue of negligence, respondent No.1 was held to be guilty, which finding is not under challenge in any appeal filed by the respondents, brought to the notice of this Court. Therefore, this Court is only to consider the issue of the adequacy of compensation awarded to the appellants in this appeal.

5. The age of the deceased, as given in the claim petition, not having been refuted, it was accepted to be 44 years of age. However, no evidence having been led with regard to his actual income, he was accepted by the Tribunal to be a semi skilled worker, earning Rs.200 per day, or Rs.6,000/- per month. A deduction of 1/3rd was applied towards the personal living expenses of the deceased and the dependency was thus calculated to be Rs.4,000/- per month, or Rs.48,000/- per year.

As regards the income derived from his agricultural land, it was held that since it was not proved that he himself was cultivating it and was, in fact, an employee on the harvester combine and further, that the land would in any case devolve upon his legal heirs (i.e. the appellants-claimants), no separate income was assessed in that regard.

6. Keeping in view the age of the deceased, a multiplier of 12 was applied, bringing the compensation payable under the head of loss of income to be Rs.5,76,000/-. Appellant No.1, i.e. the widow of the deceased, was held entitled to Rs.5,000/- for loss of consortium and the appellants were jointly held entitled to Rs.2500/- for loss of estate and another Rs.2500/- towards funeral expenses. Thus, the total compensation awarded was Rs.5,86,000/- (Rs.5,76,000/- + Rs.5000 +Rs.2500 + Rs.2500). Interest @ 7.5% was ordered to run on the compensation amount, from the date of filing of the claim petition, till the date of realization of the amount.

7. Respondents No.1 and 2, i.e. the driver and owner of the truck bearing registration no.HR-38Q-0354, not having been able to produce the driving licence of appellant No.1, despite several opportunities given, as recorded in the award, it was held that appellant No.1, as a matter of fact, did not have a driving licence. This was so held, further because of the fact

that though appellant No.2, while appearing as RW-1, had stated that he had checked the driving licence of respondent No.1 before employing him, no such plea was taken in the written statement and not even a copy of the driving licence was produced before the Tribunal.

Hence, though respondent No.3, i.e. the insurance company, was held liable to pay compensation at the first instance, rights of recovery were given for recovering the amount from respondents No.1 and 2.

8. Respondent No.2 was duly served and had been represented by counsel on all previous dates, in this Court, but was not present when the matter was finally heard. On the date prior to today, when the appeal was listed, Mr. B.S. Tewatia, Advocate, counsel for respondent No.2, was represented by another counsel, Sh. Ashok Kaushik.

As regards respondent No.1, i.e. the driver of the vehicle in question, he was never served due to lack of his correct address, though he is duly shown to be represented before the Tribunal, by a common counsel for him and respondent No.2, i.e. the owner of the vehicle.

Consequently, he had been allowed by this Court, to be served by an alternative mode, by publication in a newspaper, despite which none appeared for him.

9. Mr. Ishwar Pal, learned counsel for the appellants, submits that, firstly, the learned Tribunal had erred in assessing the income of the deceased at only Rs.6,000/- per month, inasmuch as, he was a Forman on a combine harvester and was earning far more than that amount and alongwith his agricultural income, he was, in fact, earning Rs.4,00,000/- per annum.

Learned counsel further submitted that the amounts awarded for loss of consortium (Rs.5,000/- to appellant No.1) and for loss of estate and funeral expenses (Rs.2500/- under each head), are wholly against the ratio of the law settled by the Supreme Court in the cases of **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121, **Rajesh and others v. Rajbir Singh and others,** (2013) 9 SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013)7 SCC 476, which have been consistently followed thereafter.

As such, learned counsel submitted that at least Rs.1 lac needs to be awarded to appellant No.1 towards loss of consortium and Rs.2 lacs to appellant No.2, being a minor child, who lost the love and affection and care and guidance, of his father.

He further submitted that the dead body of the deceased Dalbir Singh had to be transported from Madhya Pradesh to Punjab, for which no amount has been awarded by the Tribunal.

Next, learned counsel submitted that in terms of the aforesaid judgments, Rs.25,000/- is to be awarded towards funeral expenses and last rites of the deceased.

Mr. Ishwar Pal also submitted that no amount whatsoever, has been awarded to the appellants for loss of future prospects of income, in terms of the ratio of the judgments in the cases of **Kerala State Road Transport Corporation Vs. Susamma Thomas**, (1994) 2 SCC 176, **Rajesh v. Rajbir** and **Vimal Kanwars'** cases (supra).

Lastly, learned counsel submitted that the multiplier of '12' applied by the Tribunal, is against the ratio of the judgment in Sarla Vermas' case (supra), because in the case of a deceased person aged between 41-45 years, a multiplier of '14' is to be applied.

He, therefore, prayed that the compensation be suitably enhanced.

10. In reply, Mr. Banni Thomas, appearing for the respondent-Insurance Company, submitted that as regards the income of the deceased, with no evidence led, whatsoever, in respect thereof, except the statement of appellant No.1 (PW-1), the learned Tribunal had, in fact, awarded more than what was the income of a semi skilled worker in the year 2010. As such, that finding would not be disturbed by this Court, except to assess a lesser income as per Government 'labour rates'.

Though Mr. Thomas tried to argue against the contentions of learned counsel for the appellants, with regard to the multiplier applied and the amounts to be awarded for loss of consortium and loss of love and affection and towards funeral expenses, he could not refute the ratio of the law laid down in the cases relied upon by the counsel for the appellants.

11. As regards loss of future prospects of income, Mr. Thomas submitted that Dalbir Singh, deceased, not having been shown to be in a permanent job, this Court would not award any compensation to the appellants under that head, especially with the matter having been referred to a larger Bench by the hon'ble Supreme Court.

12. Having heard learned counsel for the parties and having considered the award of the Tribunal, I am in agreement with most of the arguments raised on behalf of the learned counsel for the appellants.

However, as regards the income of the deceased assessed by the learned Tribunal, I am in agreement with the learned counsel for respondent No.3, to the extent that, with no evidence led as to the actual income of the deceased, the income of Rs.200 per day, as would be normally earned by a semi skilled worker in the year 2010, was correctly assessed by the learned

Tribunal and that finding requires no inference with.

The deduction of 1/3rd of the expenses that the deceased may have incurred on himself, though otherwise correct, in my opinion would not hold good for a man earning only Rs.6000/- per month, with a wife and a minor child to look after, in the year 2010.

In this regard, though in **Reshma Kumari and others v. Madan Mohan and others**, (2013) 9 SCC 65, it was held that the principle laid down in *Sarla Vermas' case* with regard to deduction of expenses should generally be followed; however, it was also held that the deduction towards living expenses need not always exactly correspond to the number of dependents (reference paras 41 and 42 of the SCC citation).

Hence, in my opinion, a 1/4th deduction towards the personal expenses of the deceased would be appropriate, on the aforesaid income. As a result, the loss of dependent income of the appellant, would work out to be Rs.4500/- per month and the annual dependency to Rs.54,000/-.

13. In terms of the ratio of the law laid down in **Sarla Vermas'** case (supra), a multiplier of '14' is to be applied to the aforesaid sum, bringing the compensation to be paid on account of loss of income, to be Rs.7,56,000/- (Rs.4500 x 12=Rs.54000/- x 14=Rs.7,56,000/-).

14. In terms of the judgment cited by the learned counsel for the appellant, constantly followed thereafter, for loss of consortium to appellant No.1, a sum of Rs.1 lac is awarded and for loss of love and affection, care and guidance of his father at a time when he was a minor, a sum of Rs.1 lac is awarded to appellant No.2. Though, in Vimal Kanwars' case, a sum of Rs.2 lakhs was awarded to the minor daughter, and this Court has also been awarding upto that sum, where the minor children were at an extremely

young age, in the present case, with appellant No.2 not shown to be a 'toddler' at the time of his fathers' unfortunate death, Rs.1 lakh compensation is considered appropriate, even if not enough.

15. Similarly, in terms of the aforesaid judgments, a sum of Rs.25,000/- is awarded by way of funeral expenses and last rites of the deceased, to the appellants.

In addition to the above, in view of the fact that obviously the body of the deceased would have been brought back from District Betul (Madhya Pradesh) to his home in District Patiala (Punjab), a sum of Rs.5,000/- is further awarded on that count.

16. Coming to the issue of grant of compensation on account of loss of future prospects of income, undoubtedly, the issue has been referred to a larger Bench by the Supreme Court, for consideration of payment of such compensation, in cases where the deceased was not on a fixed salary in a permant job.

In the present case, the deceased is shown to have been working on a combine harvester as a Forman, earning a fixed salary which was never proved. However, in the opinion of this Court, even keeping inflationary trends and consequential increases in daily wages also, any skilled/semi skilled or unskilled worker would, in the normal course, have an increase in income over the years, and as such, the deceased being 44 years of age at that time, in terms of the judgments in Rajesh v. Rajbir and Vimal Kanwars' cases (supra), the appellants would be entitled to compensation under the head of loss of future prospects of income, calculated by adding 30% to the income of the deceased as assessed by the Tribunal.

However, since the matter is under consideration before a larger bench of the Supreme Court, it would be appropriate for this Court to calculate, as per the above, the amount payable to the appellant under that head, but to order disbursement only after the decision of the hon'ble Supreme Court, if it is held that compensation for loss of future prospects of income would be payable to even those who are not earning a fixed income in a stable employment.

Of course, this Court has already expressed its opinion that even in such cases, simply catering to inflation alone, such compensation would be payable.

17. Be that as it may, the compensation that would otherwise be payable under this head would, therefore, be calculated, taking the deceaseds' income to be Rs.6,000/- per month. To that amount, if 30% is added, it would come to Rs.7800/-, i.e. Rs.18,00/- by way of addition of future prospects of income, from which again a 1/4th deduction is to be made towards the personal expenses of the deceased, had he remained alive. (30% addition to the last income of the deceased, in order to calculate the loss of future prospects of income, is as per the ratio of the law laid down in the aforementioned cases, where it has been held that where the deceased was between 40 to 50 years of age, a 30% increase is to be added to his last income).

Thus, the annual dependency on the loss of future prospects of income to the appellants, works out to be Rs.1350/- per month and consequentially, the annual dependency comes to Rs.16200/-. Again applying to that a multiplier of '14', the total loss of future prospects of income to the appellants, comes to Rs.2,26,800/-.

Thus, the total compensation now awarded to the appellants is as follows:-

i)	Actual loss of income	:	Rs.7,56,000/-
ii)	Loss of future prospects of income	:	Rs.2,26,800/-
iii)	Loss of consortium to appellant No.1	:	Rs.1,00,000/-
iv)	Loss of love, affection, care and guidance to appellant No.2	:	Rs.1,00,000/-
v)	Towards funeral expenses and last rites	:	Rs.25,000/-
vi)	Towards transportation of mortal remains from Madhya Pradesh to Punjab	:	Rs.5000/-
	Total	:	Rs.12,12,800/-

Therefore, the amount of compensation now enhanced, over and above what was awarded by the Tribunal (Rs.5,86,000/-) is Rs.6,26,800/-.

Of the aforesaid sum of Rs.6,26,800/-, the amount payable on account of loss of future prospects of income, i.e. Rs.2,26,800/-, would be deposited by the respondent-Insurance company in a fixed deposit in a nationalised Bank so as to draw maximum interest thereon, which would become payable to the appellants-claimants dependent upon the final decision of the hon'ble Supreme Court, in the reference made to a larger Bench in Shashikala v. Gangalakshmamma 2015(9)SCC 150, (on the issue of payment of loss of future prospects of income in such like cases).

18. If the appellants are found entitled to the aforesaid sum, i.e. Rs.2,26,800/-, in terms of the ratio of the judgment that would be pronounced by the Supreme Court, such amount would become payable to them by the normal process of execution of an award passed by a Motor Accident Claims Tribunal, with no further reference to this Court. If the

hon'ble Supreme Court holds that loss of future prospects of income are not payable in such like cases, the amount of Rs.2,26,800/- would be withdrawn by the respondent-Insurance company, to itself.

As regards the remaining amount of enhanced compensation as is immediately payable to the appellants, in terms of this judgment, i.e. Rs.6,26,000/- minus Rs.2,26,800/-, which comes to Rs.4,00,000/- it would carry the same interest @ 7.5 per annum, as awarded by the Tribunal, running from the date of filing of the claim petition till the date of its realization.

Of the amount enhanced by this Court, appellant No.1 would be paid Rs.2,30,000/- and appellant No.2 would be paid Rs.1,70,000/-, alongwith the interest accruing thereupon in each case.

The amount of Rs.2,26,800/- to be deposited by the Insurance Company, as directed herein above, towards compensation on account of loss of future prospects of income, would be so deposited in the Bank on the same date that payment is made to the appellants, of the remaining enhanced amount of compensation, and up till that date, i.e. the date that the fixed deposit is made, that sum of Rs.2,26,800/- would also carry with it, up till the date of deposit, the same rate of interest, i.e. 7.5% per annum, also running in the same manner, i.e. from the date of institution of the claim petition till the date that the fixed deposit is made.

After that, as already stated, the normal bank interest payable on such a fixed deposit would accrue on such amount, whether it is eventually payable to the appellants or is to be withdrawn by the Insurance Company to itself, as per the judgment of the Supreme Court that would come in the future.

The appeal is allowed in the above terms, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

10.03.2016
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