IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**FAO No. 4801 of 2012 (O&M)**
**Date of Decision : 23.08.2016**

Smt. Ram Rati and others ....Appellants

Versus

Bal Ram Malhotra and others ....Respondents

**CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Surender Deswal, Advocate
for the appellants.

Mr. A.S. Sidhu, Advocate
for respondent no. 3-Insurance Company.

**Surinder Gupta, J.**

This is appeal by claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Karnal (later referred to as ‘the Tribunal) for death of Kashmira Singh (later referred to as ‘the deceased’), husband of claimant-appellant no. 1 and father of claimants-appellants no. 2 to 5 on 18.10.2003, in a motor vehicle accident with bus bearing No. HP-02-1552 (later referred to as ‘the offending vehicle’).

2. As claimants are seeking enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. The Tribunal awarded compensation of ₹3,79,000/- to claimants, which was computed as follows:-

| ***Sr.No.*** | ***Heads*** | ***Calculation*** |
|---|---|---|
| (i) | Name of the deceased | Kashmira Singh |
| (ii) | Age of the deceased | 42 years |

| | | |
|---|---|---|
| (iii) | Annual income of the deceased @ ₹3000/- per month | (₹3000x12)= ₹36000 per annum |
| (iv) | 1/3rd of (iii) deducted towards personal expenses | (₹36000-₹12000)= ₹24000 per annum |
| (v) | Annual amount of dependency after applying the multiplier of 15 | (₹24000x15)= ₹360000 |
| (vi) | Loss of consortium | ₹5000 |
| (viii) | Expenses on last rites | ₹2000 |
| (ix) | Medical expenses for treatment of the deceased from the date of accident i.e. 18.10.2003 till his death on 26.10.2003 | ₹12000 |
| ***Total*** | | **₹379000** |

4. Learned counsel for the appellants has argued that the deceased after accident was taken to Aggarwal Hospital, Ganaur (Haryana) from where he was shifted to Sachdeva Hospital, Karnal. Condition of the deceased turned very serious and he was then shifted to Sir Ganga Ram Hospital, New Delhi on 23.10.2003 where he breathed his last on 26.10.2003. The Tribunal has allowed compensation of ₹12,000/- which include hospital expenses of ₹3800/- and expenses for purchase of medicines ₹8200/-. No compensation was allowed towards pain and suffering, expenses of attendant, transportation charges and nutritious diet. Even if no bill to this effect was produced, the same could be very well assessed by the Tribunal in view of evidence proved on file that the deceased was taken from one hospital to other hospital due to his precarious condition. He has further argued that the deceased was a driver and his monthly income assessed by the Tribunal as ₹3000/- is on lower side. Claimants are also entitled to addition in income of the deceased towards future prospects as per observations of Apex Court in cases ***Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54** and ***Munna Lal Jain and others* vs. *Vipin***

***Kumar Sharma and others, 2015 (3) RCR (Civil) 447***. Claimants are also entitled to compensation towards loss of love and affection care and guidance for children of the deceased. Compensation allowed by the Tribunal towards loss of consortium and funeral expenses is also on lower side. The Tribunal has wrongly deducted $1/3^{rd}$ of income of the deceased towards his personal expenses, which as per norms settled in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121*** should be $1/4^{th}$ as the deceased had left behind wife and four children.

5. Coming to the delay of 1446 days in filing the present appeal, learned counsel for appellants has argued that appellant no. 1 being poor lady could not manage funds for filing the appeal. They had lost only bread earner of their family. Amount of compensation awarded by the Tribunal was paid to claimants but the same was consumed in paying the debts she had taken after the death of her husband in October, 2003 till payment of compensation amount in the year 2008. Though, the delay is enormous but keeping in view that it is a social legislation, purpose of which is to watch interest of victim and dependants of the victim in a motor vehicle accident, the same can be condoned by passing an appropriate order regarding grant of interest in the event of compensation being enhanced.

6. Learned counsel for respondent no. 3-Insurance Company has argued that reasons put-forth in application seeking condonation of delay have no merit. After getting compensation, claimants could file the appeal at the earliest. No worthwhile reason is made out for condonation of such a huge delay. On merits he has argued that the Tribunal has rightly assessed income of the deceased and has awarded compensation as per price index

prevailing at the relevant time and calls for no further enhancement.

7. The deceased was a driver. In the absence of any evidence regarding his income, the Tribunal has assessed the same as ₹3000/- per month to which I find no reason to differ. As per observations of Apex Court in ***Rajesh's case (supra)*** and ***Munna Lal Jain's case (supra)***, claimants are entitled to 30% addition in income of the deceased towards future prospects. They are also entitled to compensation of ₹75,000/- towards loss of love and affection care and guidance for children of the deceased and ₹75,000/- towards loss of consortium for wife of the deceased. Funeral expenses awarded as ₹2000/- is also enhanced to ₹10,000/-. The Tribunal while calculating amount of dependency applied multiplier of 15 but as per norms settled by Apex Court in ***Sarla Verma's case (supra)***, multiplier attracted in this case is 14 and deduction towards personal expenses of the deceased is 1/4$^{th}$ instead of 1/3$^{rd}$. Toward transportation and attendant expenses for taking the deceased from one hospital to other, the claimants are allowed compensation of ₹10,000/-.

8. In view of my above discussion, compensation to which claimants are entitled is reassessed as follows:-

| ***Sr. No.*** | ***Heads*** | ***Calculation*** |
|---|---|---|
| (i) | Annual income of the deceased @ ₹3000/- per month as assessed by the Tribunal | ₹36000 per annum |
| (ii) | 30% of (i) above to be added as future prospects | (₹36000+₹10800)= ₹46800 per annum |
| (iii) | 1/4$^{th}$ of (ii) deducted as personal expenses of the deceased | ₹46800 - ₹11700) = ₹35100 per annum |
| (iv) | Compensation after multiplier of 14 is applied | (₹35100X14) = ₹491400 |
| (v) | Loss of consortium for wife | ₹75000 |
| (vi) | Loss of love and affection care and guidance for children | ₹75000 |

| | | |
|---|---|---|
| (vii) | Funeral expenses | ₹10000 |
| (viii) | Hospital expenses and expenses for purchase of medicines as assessed by the Tribunal | ₹12000 |
| (ix) | Transportation and attendant expenses | ₹10000 |
| | *Total* | ₹673400 |

9. Though, there is enormous delay of 1446 days in filing and 89 days in refilling the appeal but I accept submissions made by learned counsel for appellants and the same is condoned.

10 As a sequel of my discussion above, the instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Kashmira Singh is enhanced from ₹3,79,000/- to ₹6,73,400/-, which shall be shared by claimants-appellants as follows:-

(i) Claimant no. 1-wife = 40%

(ii) Claimants no. 2 to 5 (children) = 15% each

11. Keeping in view the enormous delay in filing and refiling the appeal, respondent no. 3-Insurance Company is allowed to pay amount of compensation within four weeks from the date of passing of this order without any interest on enhanced amount of compensation. However, in the event of payment being not made to claimants within four weeks, claimants will be entitled to interest on enhanced amount of compensation @ 7.5% per annum from the date of filing of this appeal, minus the period of delay, till actual payment.

**August 23, 2016** **( SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No