

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

Decided on: 17.11.2016

1. FAO No.6621 of 2012 (O&M)

Sapna Kapoor and othersAppellants

Versus

Nanak Chand and othersRespondents

2. FAO No.4140 of 2013 (O&M)

J.P. Kapoor and anotherAppellants

Versus

Nanak Chand and othersRespondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Vivek Suri, Advocate
for the appellants (in FAO No.6621 of 2013)

Mr. R.P.S. Ahluwalia, Advocate
for the appellants (in FAO No.4140 of 2012)

Mr. Sukhdarshan Singh, Advocate
for respondent No.3 (in both the appeals)

REKHA MITTAL, J. (Oral)

CM No.16695-96-CII of 2013 in FAO No.4140 of 2013

Prayer in these applications is for condoning delay of 65 days in re-filing and 17 days in filing the appeal.

Heard.

In view of averments made in the applications supported by an affidavit of Ramesh Singh Pundir, the applications are allowed and delay of 65 days in re-filing and 17 days in filing the appeal stands condoned.

MAIN CASE

This order will dispose of FAO Nos.6621 of 2012 '*Sapna*

Kapoor and others vs Nanak Chand and others' and No.4140 of 2013 '*J.P. Kapoor and another vs Nanak Chand and others'* as these have emerged out of the same award dated 30.08.2012 passed by the Motor Accidents Claims Tribunal, Panchkula (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Sanjay Kapoor in a motor vehicular accident that took place on 13.10.2009.

The learned Tribunal assessed income of the deceased at Rs.6,000/- per month, deducted 1/4th for personal and living expenses, adopted a multiplier of 15 and computed loss of dependency at Rs.8,10,000/-. In addition, an amount of Rs.10,000/- each has been awarded for loss of consortium, funeral expenses and loss of estate making total compensation to the tune of Rs.8,40,000/- payable with interest @ 6% per annum from the date of petition till realization. Out of the awarded amount, Rs.7,60,000/- is held to be payable to the widow and children of the deceased and Rs.80,000/- to the parents.

Counsel for both the sets of appellants (widow and children in FAO No.6621 of 2012 and the parents in FAO No.4140 of 2013) have submitted that the deceased was working as Office Manager with M/s. Dashmesh Fresh Fruits at a salary of Rs.12,000/- per month. Plea of the claimants in this regard stands fortified from the statement of Amandeep Singh – PW4, based upon documentary evidence i.e. copy of licence Mark A and photocopies of the income-tax returns Mark B and C. It is further argued that the Tribunal has not allowed benefit of increase in income for future prospects in the light of judgment of Hon'ble the Apex Court “*Rajesh and others Vs. Rajbir Singh and others*”, 2013(3) R.C.R. (Civil) 170. Compensation awarded under

conventional heads needs enhancement.

Counsel representing parents of the deceased has further submitted that the Tribunal has wrongly recorded a finding that mother of the deceased is a Teacher when as a matter of fact, she had studied up to class 5th. It is further submitted that parents of the deceased are entitled to get more compensation out of compensation assessed by the Tribunal and in this regard they may be compensated by giving more share out of additional amount, assessed by this Court.

Counsel representing the widow and children of the deceased, in response, has submitted that Sh. J.P. Kapoor father of the deceased retired from Army and is a pensioner.

Counsel for the insurance company, on the contrary, has supported the assessment of compensation made by the Tribunal with the submission that testimony of Amandeep Singh – PW4 is not sufficient to establish that the deceased was working as a Manager with M/s. Dashmesh Fresh Fruits much less at a salary of Rs.12,000/- per month.

I have heard counsel for the parties, perused the paperbook and the records.

Indisputably, the deceased retired from Army service and he was less than 40 years of age at the time of death. Amandeep Singh – PW4 was examined to prove that the deceased was working with M/s. Dashmesh Fresh Fruits at a salary of Rs.12,000/- per month. Statement of Amandeep Singh with regard to employment of the deceased with M/s. Dashmesh Fresh Fruits does not find corroboration from the documents Mark A to C. Mark A is a photocopy of a licence granted by

State Agriculture Marketing Board, U.T., Chandigarh and the same at best shows that licence of M/s. Dashmesh Fresh Fruits was renewed up to 31.03.2012. Copies of the income-tax returns do not make reference to employment of deceased Sanjay Kapoor and returns were filed with the Income-tax Department after death of Sanjay Kapoor in October, 2009. That being so, the learned Tribunal has rightly refused to rely upon the documents Mark A to C and testimony of Amandeep Singh that the deceased was working with M/s. Dashmesh Fresh Fruits at a salary of Rs.12,000/- per month. However, it is an admitted position of the case that the deceased retired from Army, was less than 40 years of age at the time of death and had a family consisting of his wife and three minor children. Under the circumstances, it was not expected from the deceased to sit idle and rely upon pension only. The learned Tribunal has rightly assessed income of the deceased at Rs.6,000/- per month by getting a clue from the minimum wage of an unskilled person. However, the claimants shall be entitled to increase in income for future prospects to the extent of 50%. After extending benefit of future prospects, loss of dependency comes to **Rs.12,15,000/-** (Rs.8,10,000/- + Rs. 4,05,000/-).

Under conventional heads, widow of the deceased is awarded an amount of **Rs.1,00,000/-** for loss of consortium. The children shall be entitled to an amount of **Rs.2,25,000/-** in equal share for loss of love and affection and mother of the deceased to an amount of **Rs.50,000/-** under this head. The claimants are awarded an amount of **Rs.25,000/- each** for expenses on funeral and loss of estate. In this manner, total compensation comes to **Rs.16,40,000/-**. The enhanced

compensation of **Rs.8,00,000/-** (Rs.16,40,000/- – Rs.8,40,000/-), is payable with interest @ 7.5% per annum from the date of petition till realization.

This brings the Court towards apportionment of compensation between extended family of the deceased consisting of his widow and three children on one hand and his parents on the other. It is an undenied position that father of the deceased retired from Armed forces and is a pensioner. There is no documentary evidence on record that mother of the deceased is a Teacher. At the same time, the Court cannot overlook that Sh. J.P. Kapoor, husband of Saroj Kapoor is alive and getting pension. As such, I do not find any reason to interfere in the findings of the Tribunal awarding an amount of Rs.80,000/- only to the parents.

Out of the additional amount assessed by this Court, Rs.90,000/- shall be payable to the widow, Rs.50,000/- to the mother and the remaining amount to three children of the deceased in the ratio of 20 : 30 : 50.

The compensation payable to the minor children shall be deposited in the shape of FDRs in a nationalized bank for a period of two years or till they attain the age of majority whichever is later. The interest accrued on the FDRs shall be payable to mother of the children for meeting expenses on their education and living.

17.11.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No