

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

**FAO No. 957 of 2012 (O&M)  
Date of Decision: 04.05.2016**

**Kawaljit Kaur and another**

**.....Appellants**

**Vs.**

**Pepsu Road Transport Corporation and others**

**.....Respondents**

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

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

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Present: Mr. Satish Goel, Advocate,  
for the applicants-appellants.

Mr. Anupam Singla, Advocate,  
for respondent No. 1.

Mr. Neeraj Khanna, Advocate,  
for respondent No. 3.

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**AMOL RATTAN SINGH, J. (ORAL)**

**CM No. 4087-CII-2012**

Learned counsel for the applicants-appellants submits that the appellants being a family with no source of income after the death of the bread earner, i.e. Sher Singh, they were not in a position to file the appeal prior to having received compensation, in terms of the impugned award, which compensation, as per the application, was disbursed to them in

November 2011. Hence, he submits that a delay of 448 days has occurred in filing the appeal.

Learned counsel for respondent No. 1, i.e. Pepsu Road Transport Corporation, submits that actually the amount awarded by the Tribunal had been deposited by the judgment debtor (said respondent) in the months of February and March 2011 and hence the contention is incorrect. However, no document to that effect has been shown, i.e. that the said respondent had deposited the amount with the Tribunal, which was actually not disbursed till November 2011. Hence, the contention is not accepted.

Consequently, the application is allowed and the delay of 448 days in filing the appeal is condoned.

**FAO No. 957 of 2012**

1. This is an appeal filed by the claimants before the learned Motor Accident Claims, Tribunal, Barnala (hereinafter to be referred the Tribunal), seeking enhancement of the compensation awarded by the Tribunal.

The Tribunal had passed a common award in respect of two claim petitions filed before it, though only one set of the claimants has filed the present appeal.

2. The facts, as taken from the award of the Tribunal, are that on 10.10.2008, one Satnam Singh (also deceased) was driving a bus bearing registration No. PB-11-L-790 from the side of Pakhoke, which was being driven by him rashly and negligently and it collided

with recovery van bearing No. PB-13T-9083 driven by deceased Sher Singh, due to which he died and this accident was witnessed by Mandum Kumar and Ajit Kumar, regarding which FIR was also got registered against the driver of the bus. It was alleged that respondent Nos.1 to 4 are owners and insurer of said bus and they are liable to pay the compensation amount jointly and severally.

It was alleged that the deceased was 30 years of age at the time of his death and was drawing Rs.6,000/- per month as salary, being a driver and earned Rs. 10,000/- per month from the sale of milk. It was alleged that the claimants have suffered a lot due to his untimely death and they are entitled to compensation of Rs. 30 lacs from the respondents.

3. On notice issued to the respondents, respondent No. 1- Pepsu Road Transport Corporation (hereinafter to be referred the Corporation), filed a written statement, taking preliminary objections that the claimants have no locus standi and cause of action to file the claim petition, that the petition is not maintainable in the present form, is bad for non-joinder and mis-joinder of necessary parties, the claimants are not legal heirs of deceased, and that the respondents are entitled to special costs. On merits, pleas taken in the petition were denied.

Respondent No. 3-Raj Rani (respondent No. 2 herein), also filed a written reply, wherein it was admitted that Sher Singh was a driver who was employed with her at a salary of Rs. 6,000/- per month. It was pleaded that the accident had been caused due to the rash and negligent driving of bus No. PB-11L-7905.

Respondent No. 4-Iffco Tokio General Insurance Ltd. (respondent No. 3 herein), filed its written reply taking preliminary objections as taken by respondent No. 1. On merits also it was pleaded that the accident took place due to the rash and negligent driving of the bus and that the FIR had been recorded correctly.

Respondent No. 4-A-Gursewak Singh (respondent No. 4 herein), also filed a written statement by taking the same preliminary objections, that the claimants have no locus standi and cause of action against bus No.PB-11L-7905, and that the claim petition had been filed by the claimants in collusion with respondent No. 3, 4 and 5 and was not maintainable. On merits, it was prayed that the claim petition be dismissed with costs.

Respondent No. 5 (Harjinder Kaur), a proforma respondent, i.e. the mother of deceased, admitted the claim petition as correct, whereas respondent No.2 (Insurance Company of the bus) was not impleaded.

4. Thereafter, the usual issues on negligence, (of the bus driver, Satnam Singh), compensation, locus, non-joinder and maintainability of the petition, non-joinder of parties, were framed by the Tribunal. An issue with regard to the validity of the driving licence of the late driver of the bus was also framed.

5. For the appellants-claimants, Kavaljit Kaur, Raj Rani and HC-Sukhdev Singh were examined as PW-1 to PW-3, respectively.

No witness was examined by the respondents and after closer of evidence, an application was moved for consolidating both the

claim petitions, arising out of the accident, i.e. also the claim petition filed by the widow and other legal heirs of the driver of the bus, Satnam Singh. The application was allowed and the petitions were thereafter decided together by the Tribunal.

6. On the issue of negligence, the learned Tribunal concluded that both the drivers were equally guilty of rash and negligent driving and thereby contributed to the accident, to the extent of fifty per cent negligence, each.

It needs to be specifically noticed here that the issue qua negligence of the drivers is not in challenge in any appeal and no arguments were addressed on that issue.

Consequently, it is only the quantum of compensation that has to be considered by this Court, to determine as to whether it is to be enhanced or not.

Before that, it also needs to be noticed that the Tribunal held the Corporation, as also its Contractor, i.e. present respondent No. 4-Gursewak Singh, jointly and severally liable to pay compensation to the claimants (present appellants), to the extent of fifty per cent of the compensation assessed. Thus, the compensation awarded being Rs. 6,55,000/-, the said two respondents were held liable to pay a total sum of Rs. 3,27,500/-, jointly and severally.

No appeal filed by either of these two respondents, i.e. Pepsu Road Transport Corporation, or its Contractor, Gursewak Singh, has been brought to the knowledge of this Court, against that finding of the Tribunal.

7. Learned counsel for the appellants submits that the income of the deceased, as assessed by the Tribunal, is wholly erroneous, in view of the fact that even the employer of the deceased-Sher Singh, who was a driver on a recovery van, had testified that he was being paid Rs. 6,000/- per month.

However, the said income was not proved by way of any account books produced before the Tribunal, except a photocopy of a '*Khata Bahi*' entry, which was not accepted as cogent proof of such salary having been given to the deceased. Consequently, his salary was assessed as Rs. 4,500/- per month.

It is seen from the chart of minimum wages maintained by this Court, with regard to minimum wages notified by the State of Punjab from time to time, that the aforesaid amount is about Rs. 1,000/- above the minimum wages notified by the State of Punjab in the year 2008, the accident having taken place on 10.10.2008. Hence, the said finding of the Tribunal can not be interfered with, in my opinion.

10. As regards the deduction from the aforesaid salary, towards the personal living expenses of the deceased (had he remained alive), a 1/3<sup>rd</sup> deduction has been made, which in terms of the judgment in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121, is correct, there being three dependents on the deceased, i.e. the two claimants, who are his wife and his minor son, and respondent No. 5, his mother. Thus, the deduction of 1/3<sup>rd</sup> made

by the Tribunal is also found to be correct.

The deceased is shown to have been 25 years of age and consequently, a multiplier of 18 was applied in terms of the aforesaid judgment, which again requires no further interference with.

Hence, as regards the quantum of loss of dependent income to the appellants-claimants, the sum of Rs. 6,48,000/- awarded by the Tribunal, does not require to be interfered with.

11. Learned counsel for the appellants further submits that the compensation for loss of consortium is highly inadequate, being only Rs. 5,000/- whereas in terms of the judgments of the hon'ble Supreme Court, in **Rajesh and others vs. Rajbir Singh and others**, (2013) 9 SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013) 7 SCC 476, it should be Rs. 1,00,000/- which has been constantly followed.

Learned counsel for respondent No. 1 has not been able to refute the ratio of the aforesaid judgment and consequently, a sum of Rs. 1,00,000/- is now awarded by way of loss of consortium, to appellant No. 1.

12. Learned counsel for the appellants further submits that no amount has been awarded to the minor son of the deceased, i.e. appellant No. 2, for the loss of love and affection for his father.

Though the age of appellant No. 2 at the time of his father's death, on 10.10.2008, is not given, however, since the

deceased was 25 years of age, obviously, the minor son could not have been more than 3 to 5 years of age.

Accordingly, a sum of Rs. 1,00,000/- is awarded by way of loss of love and affection, care and guidance, to appellant No. 2.

It needs to be said here that in **Rajesh's case (supra)**, a total of Rs. 1,00,000/- had been awarded to the three minor children of the accident's victim, by the hon'ble Supreme Court. On the other hand, in **Vimal Kanwar's case (supra)**, the two year old daughter of the deceased was awarded Rs. 2,00,000/- compensation for the loss of love and affection of her father. Consequently, this Court has been awarding between Rs. 1,00,000/- to 2,00,000/- to the minor children of motor accident victims, depending upon the age of the minors at the time of the accident. Hence, Rs. 1,00,000/- is awarded to appellant No. 2, in this case also.

13. As regards respondent No. 5, i.e. the mother of the deceased, she would be entitled to Rs. 50,000/- for the loss of love and affection of her son at a very young age. Even though that amount is otherwise inadequate, but has been constantly awarded by way of compensation to parents.

14. Learned counsel for the appellants further submits that funeral expenses of Rs.2000/- is also inadequate compensation, in terms of what was awarded by the aforesaid judgments, i.e. Rs. 25,000/-, which is the compensation thereafter also awarded



by the hon'ble Supreme Court, under this head.

Consequently, Rs. 25,000/- is awarded to appellant No. 1 on this count, which is Rs. 20,000/- above what was awarded by the learned Tribunal, by way of expenses towards last rites and funeral expenses of the deceased.

Thus, the total amount of compensation now awarded to the appellants is as under:-

|                                              |                |
|----------------------------------------------|----------------|
| 1.Loss of income:-                           | Rs. 6,48,000/- |
| 1.For loss of consortium:-                   | Rs. 1,00,000/- |
| 2.For loss of love and affection:-           |                |
| (Rs. 1,00,000/- to the minor child           |                |
| and Rs. 50,000/- to the mother Rs.1,50,000/- |                |
| of the deceased)                             |                |
| 3. For funeral expenses                      | Rs. 25,000/-   |
| Total compensation                           | _____          |
|                                              | Rs. 9,23,000/- |

15. The total amount awarded by this Court now being Rs.9,23,000/-, that is Rs. 2,68,000/- (Rs. 9,23,000-6,55,000/-), over and above the amount awarded by the Tribunal. The said amount would carry an interest @ 8% per annum, as awarded by the Tribunal, running from the date of filing of the claim petition, till its realization. However, since the deceased was held guilty of 50% negligence in causing the accident, only half the enhanced amount, i.e. **Rs. 1,34,000/-** shall be paid to the appellants, and consequently, the above interest shall also be carried only on that amount.

16. Lastly, learned counsel submits that no amount, whatsoever, has been awarded towards loss of future prospects of income to the appellants.

The issue of grant of compensation towards loss of future prospects of income, in cases where the deceased is not shown to be in permanent salaried employment, is under consideration of a larger Bench of the Supreme Court, having been referred to it in **National Insurance co. Ltd. vs. Pushpa** (2015) 9 SCC 166.

Consequently, the entitlement of the appellants under this head would be dependent upon the pronouncement by their Lordships in the aforesaid reference, the deceased not having been shown to be in permanent employment, in view of the fact that even records pertaining to his salary were not proved before the Tribunal.

However, so that the matter is settled once and for all , the loss of future prospects of income are being calculated as below, but would be disbursed to the appellants only dependent upon the ratio of the judgment of the hon'ble Supreme Court (larger Bench), Pushpas' case (supra). The calculation is being made as per the ratio of law laid down in Sarla Vermas' case (supra), read with the judgments in Rajeshs' and Vimal Kanwars' cases (supra). By those judgments, where a deceased was below 40 years of age, 50% of his last known income is to be taken as the loss of future prospects of his income, from which a deduction towards his

personal expenses is to be made and thereafter the appropriate multiplier applied.

Accordingly, the loss of future prospects of income, as calculated on the above parameters, comes to Rs. 3,24,000/- ( $4,500/2 \times 1/3^{\text{rd}} \times 12 \times 18 = \text{Rs.} 3,24,000/-$ )

Again, of the aforesaid amount, 50% is to be deducted on account of the negligence proved, of the deceased himself. Therefore, Rs.1,62,000/-, alongwith interest @ 8% per annum running from the date of filing of the claim petition, till the date of deposit, would be deposited by respondent No.1-Pepsu Road Transport Corporation and respondent No. 4 herein, immediately, with the Motor Accidents Claims Tribunal, Barnala. The Tribunal would thereafter have the said amount deposited in a fixed deposit with a nationalized Bank, carrying maximum interest.

After the pronouncement of the judgment by the larger Bench of the hon'ble Supreme Court, on the issue of awardability of compensation towards loss of future prospects of income in such like cases, if the ratio of the said judgment is in favour of the appellants, the amount aforesaid, with interest as accumulated in the fixed deposit, would be disbursed to them in the same manner as an Award of the Tribunal is executed, without any further reference of this Court.

If, on the other hand, the ratio of the said judgment of the Supreme Court is against the appellants, the said amount, with interest accumulated thereupon in the fixed deposit, would

be refunded to respondents No. 1 and 4 in like manner.

17. The enhanced amount of Rs.1,34,000/- plus 8% interest, per annum, as has been awarded other than by way of loss of future prospects of income, would be immediately disbursable to the appellants.

The appeal is partly allowed as above, with no order as to costs.

**(AMOL RATTAN SINGH)**  
**JUDGE**

May 04, 2016  
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