IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 197 of 2013 (O&M)
Date of Decision : 10.05.2016

Sarabjit Kaur and others .....Appellants

Versus

Kuldip Singh and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. K.S. Dhillon, Advocate
for the appellants.

None for the respondents.

Surinder Gupta, J.

This is appeal against award dated 20.04.2012 passed by the Motor Accident Claims Tribunal, Jalandhar (later referred to as 'the Tribunal') for death of Kulwinder Singh Kular @ Sodhi (deceased) in a motor vehicle accident with Punjab Roadways bus bearing registration No. PB-32-G-1609 (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 11.07.2009 at about 01.30 p.m., the deceased was coming from ITBP Camp with his friend Kulwinder Singh on his motorcycle bearing registration no. PB-08-AQ-2514 carrying a domestic gas cylinder, when his motorcycle was hit by the offending vehicle and head of the deceased got crushed resulting in his death at the spot.

4. Claimants alleged that the deceased was carrying on the business of dairy farming and was having income of

₹30,000/- per month. He was 30 years of age. In the absence of any documentary evidence of income of deceased, the Tribunal assessed income of the deceased, considering him as unskilled labourer, as ₹4500/- per month and calculated the amount of compensation as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Kulwinder Singh Kular @ Sodhi	₹4500 per month
(ii)	1/4th of (i) deducted as personal expenses of the deceased	₹4500-₹1125 = ₹3375 per month
(iii)	Annual amount of dependency	₹3375x12=40500
(iv)	Compensation after multiplier of 17 is applied	₹40500x17 = ₹688500
(v)	Loss of consortium	₹5000
(vi)	Funeral expenses	₹5000
	Total	₹698500

5. Learned counsel for the appellants has argued that the Tribunal has not allowed any compensation for the loss of love and affection care and guidance for minor children of the deceased and loss of estate, love and affection to mother of the deceased. He has further argued that compensation allowed for loss of consortium and funeral expenses is on lower side. As per observations of the Apex Court in case of ***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 addition of 50% in come of the deceased towards future prospects. He has also argued that though, claimants could not produce documentary evidence regarding income of the deceased but all the witnesses examined in this case have categorically stated

that deceased was doing the business of dairy farming. Even if, their statements that the deceased was having income of ₹30,000/- per month was not relied still this fact is proved that income of the deceased cannot be assessed as unskilled labourer as a person who was carrying on dairy farming business is skilled person.

6. On giving a careful thought to the submissions of learned counsel for appellants I find substance therein. The witness i.e. Sarabjit Kaur, wife of the deceased, while appearing as PW-1 has stated that the deceased was carrying on the business of dairy farming and was having income of ₹30,000/- per month. Her statement is unrebutted regarding profession of the deceased. PW-2 Kulwinder Singh has also stated that the deceased was carrying on the business of dairy farming and was having income of ₹30,000/- per month. His statement is also unrebutted. PW-3 Paramjit Singh has also stated about business and income of the deceased on same lines as stated by other witnesses. In the absence of any documentary evidence statements of these witnesses regarding income of the deceased cannot be given any weight but this fact is proved on record that the deceased was carrying on the business of dairy farming, as such, for the purpose of assessing his income, he cannot be equated with unskilled labourer and his income can be safely assessed as ₹6000/- per month.

7. In case of ***Rajesh (supra)***, a three Judges Bench of the Apex Court after taking note of the observations in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and***

another, (2009) 6 SCC 121) regarding grant of future prospects, observed in para 11 and 12 as follows:-

> *11. Since, the Court in **Santosh Devi's case** (supra) actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case** (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.*
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> *12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.*

8. As per above observations, claimants are also entitled to 50% addition in income of the deceased towards future prospects.

9. The amount of compensation for loss of consortium and funeral expenses as awarded by the Tribunal is on lower side and is enhanced to ₹1 lac and ₹25,000/- respectively. Claimants no. 3 and 4 i.e. minor children of the deceased are also entitled to ₹1 lac for the loss of love and affection care and guidance. As per observations of the Apex Court in ***Vimal Kanwar and others*** ***vs.*** ***Kishore Dan and others*, 2013 (7) SCC 476**, claimant no. 2, mother of the deceased is also allowed compensation of ₹1 lac towards loss of estate, love and affection due to death of her son.

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

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Kulwinder Singh Kular @ Sodhi	₹6000 per month
(ii)	50% of (i) above to be added as future prospects	₹6000+₹3000= ₹9000 per month
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	₹9000-₹2250= ₹6750 per month
(iv)	Compensation after multiplier of 17 is applied	(₹6750X12X17) = ₹1377000
(v)	Loss of consortium	₹100000
(vi)	Loss of love and affection care and guidance	₹100000
(vii)	Loss of estate, love and affection for mother	₹100000
(vi)	Funeral expenses	₹25000
	Total	₹1702000

11. 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 ₹6,98,500/- to ₹17,02,000/-. The enhanced amount of compensation will carry

interest @ 7.5% per annum from the date of filing of claim petition till actual realization. The amount of compensation will be disbursed to claimants as per ratio laid down by the Tribunal in the award. Respondent No. 3 being insurer of the offending vehicle will deposit the share of claimants-appellants no. 1 and 2 in their bank accounts or pay the same through demand drafts. The share of claimants-appellants No. 3 and 4, who, as per their age given at the time of filing of the petition, are still 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. 1, 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 10, 2016 **(SURINDER GUPTA)**
jk **JUDGE**