

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

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FAO 2540 of 2013 (O&M)
Date of decision: 08.12.2016

Santra and others

..... Appellants

Versus

Vijay Pal and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Ram Pal Verma, Advocate
for the appellants

Mr. Devender Arya, Advocate for
Mr. Kamal Mor, Advocate
for respondent No. 1

Mr. Rajbir Singh, Advocate with
Mr. Sanjeev Goyal, Advocate
for the Insurance Company

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Rekha Mittal, J. (Oral)

The claimants are in appeal seeking enhancement of compensation in regard to death of Shri Bhagwan in a motor vehicular accident that took place on 06.02.2011.

The Tribunal assessed income of the deceased at Rs.3,600.00 per month, deducted 1/4th for personal expenses and adopted a multiplier of 13 to compute loss of dependency at Rs.4,21,200.00. In addition, a sum of Rs.5,000.00 for funeral and transport expenses and Rs.7,500.00 each for loss of estate and loss of consortium was awarded making total compensation to Rs.4,41,200.00, payable with interest at the rate of 7.5% per annum from the date of petition till realization.

Counsel for the appellants has submitted that even the minimum wage fixed by State of Haryana and available to an unskilled worker at the relevant time was approximately Rs.4,500.00 per month. The learned Tribunal has not allowed increase in income for future prospects. Compensation under conventional heads also needs enhancement.

Counsel for the insurance Company, on the other hand, has supported the award. Counsel for respondent No. 1 has endorsed contention raised by counsel for the insurance company.

The Tribunal has assessed income of the deceased at Rs.3,600.00 per month on the basis of minimum wage. However, taking into consideration the minimum wage fixed by State of Haryana available in January 2011, income of the deceased is assessed at Rs.4,500.00 per month. After allowing benefit of increase in income for future prospects to the extent of 30%, loss of dependency is calculated at **Rs.6,84,450.00** (5850.00x12x13 – 2,28,150 (being 1/4th deduction).

Under conventional heads, an amount of Rs.1,00,000.00 for loss of consortium to the widow is allowed. The claimants shall be entitled to an amount of Rs.25,000.00 each for funeral expenses and loss of estate.

With regard to compensation for loss of love and affection to the children, counsel for the insurance company has submitted that in *Shashikala and others v. Gangalakshamma and another, 2015 (2) R.C.R. (Civil) 510*, the Apex Court by taking into consideration *Rajesh and others v. Rajbir Singh and others, 2013 (3) R.C.R. (Civil) 170* and *Jiju Kuruvila and others v. Kunjuamma Mohan and others, 2013 (3) R.C.R. (Civil) 817* awarded Rs.1,00,000.00 towards loss of love and affection to the

minor children. It is contended that in view of decision by a Three Judge Bench in Rajesh's case (supra), the children, at best, are entitled to Rs.1,00,000.00 for loss of love and affection. Further submitted that as decision in Rajesh's case (supra) was rendered by a Three Judge Bench viz-a-viz judgments passed by Two Judge Benches allowing Rs.1,00,000.00 for loss of love and affection to each child, decision by a Bench of larger strength should get primacy over subsequent decision by a Bench of lesser or co-equal strength. For this purpose, counsel has referred to judgment of Hon'ble the Supreme ***Court Central Board of Dawoodi Bohra Community and another v. State of Maharashtra and another, 2016 (1) R.C.R. (Civil) 429.***

Counsel for the claimants, while refuting contentions of the insurance company would submit that ratio of a decision on a legal issue is a precedent. But an observation made by Hon'ble the Supreme Court to achieve uniformity and consistency on a socio-economy issue, as contrasted from a legal principle, can be and in fact ought to be periodically revisited as observed in ***Santosh Devi v. National Insurance Company Limited and others, 2012 (2) R.C.R. (Civil) 882.*** It is further argued that in Rajesh's case (supra), there is no observation made by the Court with regard to compensation for loss of love and affection to children though the Court allowed an amount of Rs.1,00,000.00 under that head, reflected in the table of compensation. According to counsel, accident in question took place in February 2011 whereas Rajesh's case (supra) pertains to an accident of 2007. Different benches of Hon'ble the Supreme Court allowed varying

amounts for loss of love and affection, care and guidance to children of the deceased.

As has been rightly argued by counsel for the claimants that in Rajesh's case (supra), Hon'ble the Supreme Court has not laid down any ratio with regard to amount to be awarded for loss of love and affection, care and guidance to children of the deceased. Indisputably, Rajesh's case (supra) pertains to an accident that took place in 2007 whereas the present occurrence happened in February 2011. The price index shows upward trend with passing of each year. Taking a cumulative view of the matter, in my considered opinion, interest of justice would be better served if five children of the deceased are awarded an amount of Rs.3.75 lacs in equal share for loss under the aforesaid head.

In view of the above, total compensation comes to R.12,09,450.00 and enhanced compensation is Rs.7,68,250.00 (12,09,450-4,41,200). The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization. The amount falling to share of children shall be deposited in Fixed Deposit Receipts for a period of three years or till they attain the age of majority, whichever is later. However, the interest on FDRs shall be payable to their mother for meeting expenses of the children.

Allowed in the aforesaid terms.

(Rekha Mittal)
Judge

08.12.2016
mohan bimbira

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No