IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2740 of 2013 (O&M)
Date of decision : July 18, 2016.

Krishna and another

.... Appellants

Vs.

Raj Kumar and another

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Mr. Ashok Arora, Advocate,
for the appellants.

Mr. D.P.Gupta, Advocate,
for respondent No.2-Insurance Company.

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AMOL RATTAN SINGH, J.

This is an appeal filed by the claimants before the learned Motor Accident Claims Tribunal, Fatehabad, seeking enhancement of the compensation of Rs.4,15,600/- awarded by the Tribunal to them, for the unfortunate death of their son Vinod, in a motor vehicle accident that took place on 15.06.2011.

2. The facts, as taken from the impugned Award, are that Vinod Kumar was going to village Bhodia Bishnoiyan with one Chhotu Ram, on a motorcycle bearing registration No.HR-24L-8232, with Chhotu Ram riding pillion behind Vinod.

When they reached Ludesar road, a jeep bearing registration

No.DL-1CE-4184, driven by respondent No.1, allegedly in a rash and negligent manner, came from the side of Bhattu Kalan and struck against the motorcycle, as a result of which Vinod Kumar and Chhotu Ram fell down and sustained multiple injuries.

Vinod Kumar is stated to have died on the spot and FIR No.107 was registered against respondent No.1 on the same date itself, i.e. on 15.06.2011.

It was claimed that the deceased was 26 years of age, earning Rs.20,000/- per month, by working as an agriculturist and from dairy farming and that the appellants-claimants (hereinafter to be referred to as the appellants) had been deprived of thir sons' love and affection, as also his income.

Consequently, the claim petition was filed, seeking compensation of Rs.20,00,000/-.

3. Upon notice issued to the two respondents, i.e. the owner-cum-driver of the vehicle and the National Insurance Company Limited, with which the jeep was insured, respondent No.1 filed a written statement denying the accident completely, though admitting that an FIR had been registered against him, but stating that "it was false".

The insurance company filed a separate written statement, again denying the accident but admitting the factum of the insurance, further contending that there was a violation of the terms and conditions of the insurance policy.

4. The learned Tribunal framed the usual issues with regard to whether the accident took place on account of the rash and negligent driving of respondent No.1; whether the claimants were entitled to any compensation

and from whom and additionally, with regard to lack of cause of action and locus standi.

5. The claimants examined present appellant No.2 as PW1, the aforesaid Chhotu Ram as PW2 and one Bansi Lal as PW3 and tendered five documents in evidence.

The respondents tendered three documents and closed their evidence.

6. Upon appraising the evidence, the learned Tribunal held respondent No.1 guilty of negligent driving, and then proceeded to determine the issue of compensation.

No appeal by the respondents, against any finding of the Tribunal has been filed, as per the counsel appearing before this Court.

7. As regards the income of the deceased, though PW3 Bansi Lal testified that he was running 'Reliance Dairy' and that the deceased used to sell milk to him, however, no such sale was proved, even though a document, Ex.P1, was produced by way of evidence, bearing no signatures of the deceased on any page.

Hence, with no other proof of income, the learned Tribunal concluded that he could at best be assessed to be having an income of Rs.5200/-.

Since the deceased was a bachelor, half the income was deducted towards his personal living expenses, thereby bringing the loss of annual dependent income of the claimants to be Rs.31,200/-.

To the aforesaid sum, a multiplier of 13 was applied by the Tribunal, taking the age group of the appellants, i.e. the parents of the deceased, to be 45 and 50 years respectively.

Thus, the loss of dependent income was calculated to be Rs.4,05,600/-.

To the aforesaid sum, Rs.10,000/- was added towards the last rites of the deceased, thereby awarding a total compensation of Rs.4,15,600/-.

Interest @ 9% per annum, running from the date of the filing of the claim petition till the date of reallization of the aforesaid sum, was also awarded by the Tribunal.

The authenticity of the driving licence of respondent No.1 not having been challenged by the insurance company and no violation of the terms and conditions of the policy having been proved, eventually the liability to pay the compensation was foisted upon respondent No.2, though otherwise of course, both the respondents were were held jointly and severally liable to pay it.

8. Before this Court, learned counsel for the appellants submitted that, firstly, the multiplier applied to the loss of annual dependent income of the appellants, has been erroneously applied by the Tribunal, in terms of the judgment of the hon'ble Supreme Court in **Amrit Bhanu Shali and others v. National Insurance Co. Ltd. and others,** 2012(4) RCR (Civil) 343, and actually a multiplier of 17 is to be applied, where the age group of the deceased was between 26 to 30 years.

He further submitted that no amount has been awarded to the appellants for the loss of love and affection of their son and that the amount of Rs.10,000/- awarded towards the last rites and funeral expenses, is also inadequate in terms of the judgmnts 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.

Still further, learned counsel submitted that the Tribunal wholly erred in not awarding compensation towards the loss of future prospects of income to the appellants, again in terms of the ratio of the judgments in the aforesaid two cases.

9. Mr. D.P.Gupta, learned counsel for respondent No.2, on the other hand submitted that the multiplier has been correctly applied as per the age of the parents and, as regards loss of future prospects of income, the matter has been referred to a larger Bench in **National Insurance Company Limited v. Pushpa,**(2015) 9 SCC 166, for final determination of whether such compensation is payable where the deceased was not in a permanent salaried employment.

10. Having considered the aforesaid arguments, as also the Award of the learned Tribunal, learned counsel for the appellants is correct to the extent that as regards the multiplier applied by the Tribunal, to the loss of dependent income of the appellants, the correct multiplier should have been 17 and not 13. Otherwise of course, the income assessed cannot be held to be low, as in the absence of any other proof of income of the deceased, the amount of Rs.5200/- per month is well above the minimum wages notified by the Government of Haryana, for an unskilled worker, as on 15.06.2011.

50% of that assessed income of the deceased was also correctly deducted, he being a bachelor, as per the ratio of the judgment of **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121. Consequently, as regards the actual loss of income to the appellants, it would work out to Rs.5,30,400/- (Rs.5200/2x12x17). The said sum is accordingly awarded to appellant No.1, i.e. the mother of the deceased.

In ***Sarla Vermas'*** case itself it was held by their Lordships that only the mother can be considered to be dependent upon the deceased earning son/daughter, if he/she was unmarried. That principle has been subsequently followed as well settled law, that unless there is specific proof that the father of the deceased was actually dependent upon him, he cannot claim compensation under the head of loss of dependant income.

11. As regards compensation for love and affection, in the opinion of this Court, the Tribunal wholly erred in not awarding any compensation to the parents who lost their young son, and though Rs.50,000/- is actually inadequate compensation to such parents, however, conventionally that amount has been awarded by this Court to parents of adult children who unfortunately died in a motor vehicle accident. Consequently, both the appellants are awarded Rs.50,000/- each, for the loss of love and affection of their 26 year old son.

12. As per the judgments in *Rajesh v. Rajbir and Vimal Kanwars'* cases (supra), towards the last rites and funeral expenses of the deceased, the appellants are entitled Rs.25,000/- instead of the Rs.10,000/- awarded by the Tribunal, and consequently are awarded the said sum.

13. Coming last to the issue of compensation for loss of future prospects of income, learned counsel for respondent No.2 is correct in submitting that in view of the judgment in **Reshma Kumari v. Madan Mohan,** (2013) 9 SCC 65, which was not noticed in the subsequent judgment in *Rajesh v. Rajbir,* the matter has been referred by the hon'ble Supreme Court to a larger Bench in *Pushpas'* case (supra). Thus, this Court has been calculating the loss of future prospects of income that may be payable to the

eligible claimants in motor vehicle accident claims cases, but has been withholding disbursement of the calculated sum, till the decision of the Supreme Court (larger Bench) in the aforesaid case of *Pushpa.*

Accordingly, the 'possibly payable' loss of dependent income of the appellants, is calculated hereinafter, on the parameters laid down in *Sarla Vermas'* case (supra).

Since the assessed income of the deceased was Rs.5200/- and he was less than 40 years of age, half that income has to be taken as the base for calculating the loss of future prospects of income.

Hence, 50% of Rs.5200/- being Rs.2600/- a deduction of 50% is again to be applied to that sum, towards the personal living expenses of the unmarried deceased, thereby coming to a figure of Rs.1300/- per month, or Rs.15,600/- per annum. Applying a multiplier of 17 to that sum, the total loss of future prospects of income, that may be payable to the appellants, is Rs.2,65,200/-.

14. Hence, respondent No.2, i.e. the insurance company, shall deposit the aforesaid sum, i.e. Rs.2,65,000/-, with the Tribunal, alongwith interest @ 6% per annum, running from the date of the filing of the claim petition, till the date of such deposit.

The Tribunal shall further have the aforesaid sum deposited in a fixed deposit carrying maximum interest, with a nationalized bank.

If the ratio of the judgment of the Supreme Court in *Pushpas'* case (supra), comes in favour of the claimants in such like cases, the aforesaid sum, alongwith the interest that would have accrued in the fixed deposit, would be disbursed to the appellants in the same manner as compensation in motor vehicle accident claims cases is disbursed to the claimants in such cases, with no further reference to this Court.

If, on the other hand, the hon'ble Supreme Court holds that the loss of future prospects of increased income are not payable to claimants in such like cases, then the insurance company (respondent No.2) would be entitled to have the deposited sum refunded to itself, upon an application made to the Tribunal, alongwith the interest that would have accrued upon the amount in the fixed deposit.

15. Presently what is awarded to be appellants, *de hors* the loss of future prospects of increased income, is as follows:-

i)	Towards actual loss of income to appellant No.1	Rs.5,30,400/-
ii)	Towards loss of love and affection	Rs.50,000/- each =1,00,000/-
iii)	Towards last rites (to appellant No.2)	Rs.25,000/-
	Total	**Rs.6,55,400/-**

Thus, the compensation now awarded is Rs.2,39,800/- over and above the sum of Rs.4,15,600/- awarded by the Tribunal.

The enhanced amount would carry interest @ 7.5% per annum, running from the date of the filing of the claim petition till the date of realization thereof.

The appeal is accordingly allowed, but with no order as to costs.

July 18, 2016 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**