

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1414 of 2014 (O&M)
Date of Decision : 20.01.2016

Sunita and others

.....Appellants

Versus

Jagsir and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sham Lal Bhalla, Advocate
for the appellants.

Mr. Harish Sharma, Advocate
for respondent no. 1.

Mr. L.C. Aggarwal, AAG, Punjab.

Surinder Gupta, J.

This is appeal by claimants Sunita and others against award dated 17.01.2013 passed by Motor Accident Claims Tribunal, Ludhiana (later referred to as 'the Tribunal') allowing compensation of ₹6,85,360/- for the death of Kishori Lal, husband of claimant-appellant no. 1, father of claimants-appellants no. 2 and 3 and son of claimant-appellant no. 4, in a motor accident with bus bearing registration no. PB-29G-9647 (later referred to as 'the offending vehicle').

2. Case of claimants, in brief, is that on 01.03.2010, the deceased alongwith his brothers-in-law Bikhi Ram and Chunni Lal was going to confectionery center of Verka Milk Plant. At about 03.30 p.m., the offending vehicle, which was being driven by Jagsir Singh-respondent no. 1 in a rash and negligent manner, hit the deceased and his bicycle as a result of which the deceased received multiple injuries and died at the spot. The

matter was reported to the police by Bikhi Ram vide FIR No. 73 dated 01.03.2010.

3. The respondents in their written statement denied the accident.

4. On appraisal of evidence, the Tribunal held that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1. The Tribunal as per entries in the muster roll, took monthly income of the deceased as ₹5360/-. As the deceased was 41 years of age at the time of accident, multiplier of 14 was applied and on adding ₹5000/- as compensation for the loss of consortium and ₹5000/- towards funeral expenses, the compensation of ₹6,85,360/- was allowed.

5. Claimants-appellants have sought enhancement of compensation in this appeal. Learned counsel for the appellants has argued that as per observations in cases 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**, the claimants are entitled to addition of 30% in income of the deceased towards future prospects and ₹1 lac for loss of consortium for appellant no. 1 and equal amount for the loss of love and affection, care and guidance for appellants no. 2 and 3 and another amount of ₹1 lac towards loss of estate, love and affection for respondent no. 4. The claimants are also entitled to compensation of ₹25,000/- towards funeral expenses.

6. Learned counsel for respondent no. 1 and Assistant Advocate General, Punjab representing respondents no. 2 and 3

have argued that the Tribunal has rightly taken income of the deceased and then applied the multiplier of 14, keeping in view the observations in case of **Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**. The Tribunal was required to allow just and reasonable compensation which has already been allowed, as such, the appellants are not entitled to any enhancement.

7. Learned counsel for respondents have further argued that the matter regarding allowing of compensation towards future prospects as decided by the Apex Court in the case of **Rajesh (supra)** is pending consideration before the larger Bench of the Apex Court in case **National Insurance Company Limited vs. Pushpa and others, Appeal (C) No.8058 of 2014 decided on 02.07.2014 (MANU/SC/1246/2014)**.

8. In the case of **Pushpa (supra)**, while differing with the view taken in case of **Sarla Verma and others vs. Delhi Transport Corporation and anr., (2009) 6 SCC 121**, it was observed as follows:-

*“18. Therefore, we do not think that while making the observations in the last three lines of para 24 of **Sarla Verma** judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of*

compensation.”

9. In case of **Rajesh and others vs. Rajbir and others** (2013) 9 SCC 54, a three Judges Bench of Hon'ble Apex Court has observed in para 11 and 12 as follows:-

- “11. Since, the Court in **Santosh Devi's case**¹ (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.
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. ”

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Santosh Devi v. National Insurance Co. Limited, (2012) 6 SCC 421

10. Reference was made to a larger Bench of Hon'ble Apex Court in case of ***Pushpa (supra)*** on 02.07.2014. In the recent judgment dated 15.05.2015 in case titled ***Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447***, a three Judges Bench of Hon'ble Apex Court allowed future prospects in the case of self-employed persons following the observations made in case of ***Rajesh (supra)***.

11. The concept of future prospects envisages chances or opportunities for success and further progress in life which is a normal course of event for every human being involved in any avocation. Even if, keeping in view his ability, capacity etc., one may not be in a position to rise in life, there is another aspect that justifies the grant of addition in the income of the deceased, which is the 'inflationary trend' in which we all are living. For instance, I take instance of a tailor. It is a matter of common knowledge that stitching charges have increased manifold during last two decades due to increase in expenses of material/labour charges/margin of persons in this profession, with consequent increase in their income. This is because of high increase in the cost of living. The dependents of a deceased in accident have also to face the same situation. The amount of compensation is required to be just and reasonable keeping the inflationary trend in view, where the prices of the basic amenities of life are likely to increase further.

12. As per observations in case of ***Rajesh (supra)*** and ***Munna Lal Jain (supra)***, addition of 30% is to be made in income of the deceased towards future prospects. The wife,

children and mother of the deceased are also entitled to compensation for the loss of consortium, loss of love and affection, care and guidance and loss of estate. Keeping in view the guidelines in the above referred cases, the amount of compensation to which the claimants are entitled, is calculated as follows:-

Sr. No.	Heads	Calculation
(i)	Income of the deceased	₹5360 per month
(ii)	30% of (i) above to be added as future prospects	₹5360+₹1608 = ₹6968 per month
(iii)	1 / 4 th of (ii) deducted as personal expenses of the deceased	₹6968-₹1742 = ₹5226 per month
(iv)	Compensation after multiplier of 14 is applied (as already applied by the Tribunal)	(₹5226X12X14) = ₹877968
(v)	Loss of consortium	₹100000
(vi)	Loss of love and affection, care and guidance for the children	₹100000
(vii)	Loss of estate, love and affection	₹100000
(viii)	Funeral expenses	₹25000
<i>Total</i>		₹1202968

13. The appeal is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Kishori Lal is enhanced from ₹6,85,360/- to ₹12,02,968/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization.

January 20, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? Yes/No