IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1669 of 2014 (O&M)
Date of Decision : 13.05.2016

Sudesh Yadav and another .....Appellants

Versus

German Singh and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. T.P. Yadav, Advocate
for the appellants.

Mr. J.P. Sharma, Advocate
for respondents no. 1 and. 2.

Mr. Amit Jaiswal, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimants Sudesh Yadav and Pardeep Yadav seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Narnaul (later referred to as 'the Tribunal') for death of their son Saurabh Kumar (later referred to as 'the deceased') in a motor vehicle accident with truck No. HR-47-3584 (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 claimant, in brief, is that on 15.12.2008, the deceased alongwith Sonu was going on motorcycle towards village Mandhana via Narnaul when on the way his motorcycle was hit by the offending vehicle on Narnaul-Behror road near Padam Jain saw mill in the area of village Mandhana. Deceased suffered multiple grievous injuries and died at the spot. He was

19 years of age and was student of 2nd year of Mechanical Engineering, Gurgaon Institute of Technology, Tauru Road, Bilaspur. He was also working as part time mobile mechanic and was earning ₹20,000/- per month.

4. The Tribunal held that the deceased, who was 20 years of age, was a student of 2nd year of Mechanical Engineering and after completion of degree of engineering he would have earned not less than ₹10,000/- per month. From this income deduction of ½ was made towards personal expenses of the deceased (wrongly mentioned as 1/3rd in para 25, may be due to typographical mistake). The Tribunal applied multiplier of 14 and assessed amount of dependency as ₹8,40,000/- to which compensation of ₹20,000/- was added towards charges for transportation and last rites and ₹10,000/- towards loss of consortium while awarding total compensation of ₹8,70,000/-.

5. Learned counsel for the appellants has sought enhancement of compensation on four counts. Firstly, multiplier applied by the Tribunal is on lower side as per norms settled by the Apex Court in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***. The multiplier attracted to this case is of 18. Claimants are also entitled to addition in income of the deceased towards future prospects. The compensation allowed for loss of estate, love and affection for parents of the deceased (wrongly mentioned as compensation for loss of consortium) is also on lower side and should be enhanced to ₹1 lac.

6. Learned counsel for respondent no. 3-Insurance

Company has argued that the Tribunal had to allow just and reasonable compensation for death of the deceased. In this case, the Tribunal has assessed income of the deceased as ₹10,000/- per month without there being any evidence on record. The deceased was a student of 2nd year of Mechanical Engineering. The observations of the Tribunal that he would have earned not less than ₹10,000/- per month is not based on any evidence on file and is erroneous. No instance was brought on record that in the year 2008 any person similarly placed was earning ₹10,000/- per month. Keeping in view these facts, it is not a case, which calls for enhancement of compensation.

7. Hon'ble three Judges Bench of Apex Court in case of ***Reshma Kumari and ors.*** ***vs.*** ***Madan Mohan and anr.***, ***2013 (9) SCC 65*** has observed in para 29 to 31 as follows:-

> *"29. Section 168 of the 1988 Act provides the guideline that the amount of compensation shall be awarded by the claims tribunal which appears to it to be just. The expression, 'just' means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously 'just compensation' does not mean 'perfect' or 'absolute' compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case.*
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> *30. Almost a century back in* ***Taff Vale Railway Co.***

***v. Jenkins**, **1913 AC 1**, the House of Lords laid down the test that award of damages in fatal accident action is compensation for the reasonable expectation of pecuniary benefit by the deceased's family. The purpose of award of compensation is to put the dependants of the deceased, who had been bread-winner of the family, in the same position financially as if he had lived his natural span of life; it is not designed to put the claimants in a better financial position in which they would otherwise have been if the accident had not occurred. At the same time, the determination of compensation is not an exact science and the exercise involves an assessment based on estimation and conjectures here and there as many imponderable factors and unpredictable contingencies have to be taken into consideration.*

*31. This Court in **C.K. Subramania Iyer and Ors. v. T.Kunhikuttan Nair and Ors., 1970 (2) SCR 688**, reiterated the legal philosophy highlighted in Taff Vale Railway 21 for award of compensation in claim cases and said that there is no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations. Obviously, award of damages in each case would depend on the particular facts*

> *and circumstances of the case but the element of fairness in the amount of compensation so determined is the ultimate guiding factor."*

8. In case of ***Sarla Verma (supra),*** the concept of future prospects was mooted for the deceased in a motor vehicle accident, who was in a permanent job, which was further approved by Hon'ble three Judges Bench in case of ***Reshma Kumari (supra).*** The Hon'ble Bench in para 36 has observed as follows:-

> *"36. The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be*

justified in extraordinary circumstances and very exceptional cases."

9. This concept was further developed by the Hon'ble three Judges Bench of Apex Court in case of ***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54***, wherein it was 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.*
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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*

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

> *the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter. "*

10. The above proposition was also followed by Hon'ble three Judges Bench of Apex Court in case of ***Munna Lal Jain and others*** ***vs.*** ***Vipin Kumar Sharma and others*, 2015 (3) RCR (Civil) 447.**

11. In view of law laid down by Apex Court, addition in income of the deceased towards future prospects is to be made while computing amount of compensation.

12. Despite the above settled proposition, I do not find any reason to apply any addition in income of the deceased towards future prospects keeping in view the fact that the Tribunal has taken income of the deceased as ₹10,000/- per month without any evidence on record and just on presumption that he would not have earned less than ₹10,000/- per month after completion of his studies.

13. The Tribunal had to award just and reasonable amount of compensation, which is adequate, fair and equitable in the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. I am of the opinion that income assessed by the Tribunal includes the future prospects, as such, no addition is allowed on this score.

14. The Tribunal applied multiplier of 14 while calculating amount of dependency. As per norms laid down by Apex Court in case of ***Munna Lal Jain (supra)***, the multiplier

applicable to this case is 18. Claimants being parents are also entitled to compensation for loss of estate, love and affection, which is quantified as ₹1 lac and a sum of ₹25,000/- towards funeral expenses.

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

Sr. No.	***Heads***	***Calculation***
(i)	Age of Saurabh Kumar (deceased)	20 years
(ii)	Income of the deceased including future prospects	₹10000 per month
(iii)	½ of (ii) deducted as personal expenses of the deceased	₹10000-₹5000= ₹5000 per month
(iv)	Compensation after multiplier of 18 is applied	(₹5000X12X18) = ₹1080000
(v)	Loss of estate, love and affection	₹100000
(vi)	Compensation for funeral expenses	₹25000
Total		₹1205000

16. 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 ₹8,70,000/- to ₹12,05,000/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition minus 300 days (delay in filing the appeal, which was condoned) till actual realization. Respondent No. 3 being insurer of the offending vehicle will deposit the share of claimants-appellants in their bank accounts or pay the same through demand drafts. Counsel fee is assessed at ₹ 20,000/-.

May 13, 2016 **(SURINDER GUPTA)**
jk **JUDGE**