IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2032 of 2014 (O&M)
Date of Decision : 06.04.2016

Kiran @ Sunita and others .....Appellants

Versus

Naresh Kumar and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Munish Kumar Garg, Advocate for the appellants.

Mr. R.C. Kapoor, Advocate for respondents no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimants-appellants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Jind (later referred to as 'the Tribunal') for death of Gopal Krishan @ Gopal Sharma (deceased), husband of claimant-appellant no. 1; father of claimants-appellants no. 2 and 3; and son of claimant-appellant no. 4, in a motor vehicle accident with Tata Indigo Car No. HR-31-E-4955 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal relates to seeking of enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. The Tribunal allowed compensation of ₹30,30,000/- by assessing income of the deceased as ₹20,000/- per month. 1/4th of above income was deducted towards personal expenses of the deceased and by applying multiplier of 16 amount of dependency was calculated as ₹28,80,000/- to which a sum of ₹1,00,000/- was

added towards loss of consortium for the wife and ₹25000/- towards loss of love and affection for the children. Besides this, an amount of ₹25,000/- was allowed for funeral expenses.

4. Learned counsel for the appellants has sought enhancement of compensation on three counts reproduced as follows:-

(i) that the Tribunal has not taken into account statement of PW-3 Harish Manocha, Regional Manager of Franklin Laboratory (India) Pvt. Ltd. wherein he has stated that the deceased besides his salary of ₹20,000/- per month was also drawing ₹8000/- per month approximately as DA, TA, commission and bonus;

(ii) that as per observations in case of ***Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54**, the Tribunal has not made any addition in income of the deceased towards future prospects; and

(iii) that compensation of ₹25,000/- allowed by the Tribunal for the loss of love and affection, care and guidance for minor children of the deceased is on lower side. No amount of compensation was allowed by the Tribunal for the loss of estate, love and affection for the mother of the deceased.

5. Learned counsel representing respondent no. 3-Insurance Company has argued that statement of PW-3 Harish Manocha that the deceased was also getting ₹8000/- towards TA, DA, commission and bonus was not supported by any documentary evidence, as such, the Tribunal has rightly ignored this aspect. Regarding addition in income of the deceased towards future prospects, learned counsel for respondent no. 3-Insurance Company has 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 by 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)***.

6. 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."*

7. In case of ***Rajesh (supra),*** 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*

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

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. "*

8. 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)***.

9. 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. 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 consequential increase in their income. This is because of high increase in the cost of living. The prices of grocery items of daily need have also increased manifold. The dependents of a victim 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.

10. The Tribunal relied on statement of PW-3 Harish Manocha, who produced salary certificate of the deceased as Ex. PW-3/C to Ex. PW-3/H, wherein his salary was depicted as ₹20,000/- per month. The Tribunal has rightly ignored this part of his statement that the deceased was also getting ₹8000/- towards TA, DA, commission and bonus apart from his salary as this witness had failed to produce any documentary evidence in this regard. In the absence of any documentary evidence, bare statement of a witness carries no weight. In view of this I discard the submission of learned counsel for the appellants to the effect that the Tribunal has committed error while not taking into consideration the amount of ₹8000/- towards TA, DA, commission and bonus being allowed to the deceased.

11. In view of my discussion in paras 6 to 9 and as per observations in cases of ***Rajesh (supra)*** and ***Munna Lal Jain***

(supra), addition of 50% is to be made in income of the deceased towards future prospects. The deceased left behind claimants no. 2 and 3, who are his minor children. As per observations of the Apex Court in cases of ***Rajesh (supra) and Munna Lal Jain (supra)***, claimants no. 2 and 3 are also entitled to compensation of ₹1 lac towards loss of love and affection, care and guidance. As per observations of the Apex Court in case of ***Vimal Kanwar and others vs. Kishore Dan and others, 2013 (7) SCC 476,*** claimant-appellant no. 4 is also allowed compensation of ₹1 lac towards loss of estate, love and affection.

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

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Gopal Krishan @ Gopal Sharma as assessed by the Tribunal	₹20000 per month
(ii)	50% of (i) above to be added as future prospects	₹20000+₹10000 = ₹30000 per month
(iii)	$1/4^{th}$ of (ii) deducted as personal expenses of the deceased	₹30000-₹7500 = ₹22500 per month
(iv)	Compensation after multiplier of 16 is applied	(₹22500X12X16) = ₹4320000
(v)	Loss of consortium (already allowed by the Tribunal)	₹100000
(vi)	Loss of love and affection, care and guidance for the children	₹100000
(vii)	Loss of estate, love and affection for parents	₹100000
(viii)	Funeral expenses (already allowed by the Tribunal)	₹25000
	Total	₹4645000

13. 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 ₹30,30,000/- to ₹46,45,000/-. 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 in the same proportion, as allowed by the Tribunal. Respondent No. 3 being insurer of the offending vehicle will deposit the share of claimants no. 1 and 4 in their bank accounts or pay the same through demand drafts. The share of claimants-appellants No. 2 and 3, 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. Counsel fee is assessed at ₹ 20,000/-.

April 06, 2016 **(SURINDER GUPTA)**
jk **JUDGE**