IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 3774 of 2014 (O&M)
Date of Decision : 29.08.2016

Rajender .....Appellant

Versus

Azad Singh and others .....Respondents

2. FAO No. 3775 of 2014 (O&M)

Sharda Devi and others .....Appellants

Versus

Azad Singh and others .....Respondents

3. FAO No. 3777 of 2014 (O&M)

Murti and others .....Appellants

Versus

Azad Singh and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikrant Hooda, Advocate
for the appellants.

None for respondents no. 1 and 2.

Mr. Sanjeev Kodan, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

Three appeals captioned above have been taken up together as same arise from award dated 28.02.2013 passed by Motor Accident Claims Tribunal, Jhajjar (later referred to as 'the Tribunal') allowing compensation for death of Ghasi Ram, aged 78 years, Niranjan Singh, aged 36 years and Satnarayan, aged 60 years in a motor vehicle accident on 01.05.2011 with truck bearing registration no. HR-46-B-5416 (later referred to as 'the offending vehicle').

2. On the fateful day, deceased alongwith Amarjeet, Vijender, Umesh and Guddi were going from their village Pilana to Gad-Ganga in SUV bearing registration no. HR-16K-0019 (Fortuner), when it was hit by the offending vehicle resulting in multiple grievous injuries to occupants of SUV. Satnarayan and Ghasi Ram succumbed to injuries at the spot while Niranjan breathed his last while being taken to PGIMS, Rohtak.

3. As claimants are seeking enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

4. Tribunal held that accident had taken place due to rash and negligent driving of the offending vehicle by its driver and allowed compensation to claimants as follows:-

For death of Ghasi Ram (MACT No. 137 of 2011, FAO No. 3774 of 2014)

Sr. No.	***Heads***	***Calculation***
(i)	Age of the deceased	78 years
(ii)	Income of deceased	₹15000 per annum
(iii)	Amount of dependency after applying multiplier of 5	(₹15000X5) = ₹75000 per annum
(iv)	Funeral expenses	₹5000
	Total	**₹80000**

For death of Niranjan Singh (MACT No. 138 of 2011, FAO No. 3775 of 2014)

Sr. No.	***Heads***	***Calculation***
(i)	Age of the deceased	36 years
(ii)	Income of deceased	₹5200 per month
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	(₹5200-₹1733) = ₹3467 per month

(iv)	Amount of dependency after applying multiplier of 15.	(₹3467X12X15) = ₹624060 (rounded off to ₹624000
(v)	Loss of consortium	₹5000
(iv)	Funeral expenses	₹5000
Total		**₹634000**

For death of Satnarayan (MACT No. 139 of 2011, FAO No. 3777 of 2014)

Sr. No.	***Heads***	***Calculation***
(i)	Age of the deceased	60 years
(ii)	Income of deceased	₹4000 per month
(iii)	1/5th of (ii) deducted as personal expenses of the deceased	(₹4000-₹800) = ₹3200 per month
(iv)	Amount of dependency after applying multiplier of 7.	(₹3200X12X7) = ₹624060 (rounded off to ₹268800
(v)	Loss of consortium	₹5000
(vi)	Funeral expenses	₹5000
Total		₹278800

FAO No. 3774 of 2014

5. Learned counsel for appellants has argued that while computing amount of compensation in case of deceased Ghasi Ram, the Tribunal has not allowed any compensation towards loss of love and affection for the claimant, who is son of the deceased. Funeral expenses allowed are also on lower side and should be allowed at least ₹25000/- as per observations of Apex Court in ***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***.

6. Learned counsel for respondent no. 3-Insurance Company has argued that the deceased was 78 years of age. Claimant was not dependent

on his income and is entitled to compensation only under Section 140 of the Motor Vehicles Act (later referred to as 'the Act'), as such, compensation of ₹80,000/- allowed in this case is just and reasonable.

7. On giving a careful thought to submissions of learned counsel for parties, I find that death of Ghasi Ram was caused due to rash and negligent driving of offending vehicle, as such, provisions of Section 140 of the Act are not applicable to this case. Tribunal assessed loss of income to claimant as ₹75000/-. Besides this amount, he is also entitled to compensation towards funeral expenses, which is assessed as ₹25000/- and also for loss of love and affection, which is assessed as ₹25000/-. Total amount of compensation to which claimant is entitled in **FAO No. 3774 of 2014** is reassessed as ₹1,25,000/-.

FAO No. 3775 of 2014

8. Learned counsel for appellants has argued that deceased Niranjan Singh was a clerk but the Tribunal has assessed his income in the absence of any evidence of his employment as ₹5200/- per month. The deceased was 36 years of age. As per observations of Apex Court in ***Rajesh (supra)*** and ***Munna Lal Jain (supra)***, claimants are entitled to 50% addition in income of the deceased towards future prospects. Compensation allowed to wife of the deceased towards loss of consortium is quite meagre and calls for enhancement to ₹1 lac. The Tribunal did not allow any compensation to minor children of the deceased towards loss of love and affection care and guidance and compensation awarded towards funeral expenses is also on lower side.

9. Learned counsel for respondent no. 3-Insurance Company has argued that the matter regarding grant of future prospects has been referred to a larger Bench of Apex Court in case of ***National Insurance Company***

***Limited* vs. *Pushpa and others*, 2015 (9) SCC 166** and till the judgment by larger Bench, it is not appropriate to award compensation towards future prospects.

10. 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."*

11. 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 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*

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

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. "*

12. 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 ***Munna Lal Jain (supra),*** 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)***.

13. 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.

14. As per observations of Apex Court in cases of ***Rajesh (supra)*** and ***Munna Lal Jain (supra),*** claimants are entitled to 50% addition in income of the deceased, aged 36 years on the date of accident, towards future prospects. Claimants are also entitled to compensation of ₹1 lac towards loss of consortium for wife and ₹1 lac for loss of love and affection care and guidance for children of the deceased. Compensation awarded towards funeral expenses is also enhanced to ₹25000/-.

15. In view of above, the amount of compensation to which claimants are entitled, is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of deceased Niranjan Singh	₹5200 per month (as assessed by Tribunal)
(ii)	50% of (i) above to be added as future prospects	(₹5200 +₹2600) = ₹7800 per month
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	(₹7800-₹2600) = ₹5200 per month
(iv)	Compensation after multiplier of 15 is applied	(₹5200X12X15) = ₹936000
(v)	Loss of consortium	₹100000
(v)	Loss of estate, love and affection	₹100000
(vi)	Funeral expenses	₹25000
Total		**₹1161000**

<u>FAO No. 3777 of 2014</u>

16. Learned counsel for appellants has argued that the deceased was 60 years of age and multiplier attracted to this case is 9 as per norms laid down by Apex Court in ***<u>Sarla Verma and ors. vs. Delhi Transport Corporation</u>***

<u>and another,</u> (2009) 6 SCC 121 while the Tribunal has applied multiplier of 7. For compensation under the heads of loss of consortium, loss of love and affection for children of the deceased and funeral expenses, he has advanced similar arguments as advanced by him in FAO No. 3775 of 2014.

17. Learned counsel for respondent no. 3-Insurance Company has not contested the applicability of multiplier of 9 as per observations of Apex Court in ***Sarla Verma's case (supra)***. However, he has stated that the deceased was 60 years of age and his wife was also quite old, as such, she can be allowed compensation for loss of consortium @ 50% as allowed in ***Rajesh's case (supra)***. Children of the deceased i.e. claimants no. 2 to 7 were not dependent of income of the deceased, as such, are not entitled to compensation for loss of love and affection.

18. The deceased was 60 years of age and left behind his wife and six children. Children have lost love and affection of their father, as such, are entitled to compensation on this score, which is quantified as ₹1 lac. In the age when one is going to be senior citizen, he is more dependent on his spouse as children by this age grow up and get involved with their families. To say that compensation for loss of consortium at the age of 60 should be 50% of the compensation under this head as allowed in young age, will be a travesty, unethical and against canon of justice. Wife of the deceased is allowed compensation towards loss of consortium, which is quantified as ₹1 lac. Amount of compensation allowed by the Tribunal towards funeral expenses is also enhanced to ₹25000/-.

19. In view of above, the amount of compensation to which claimants are entitled, is reassessed as follows:-

Sr. No.	*Heads*	*Calculation*
(i)	Age of the deceased	60 years
(ii)	Income of deceased	₹4000 per month
(iii)	1/5th of (ii) deducted as personal expenses of the deceased	(₹4000-₹800) = ₹3200 per month
(iv)	Amount of dependency after applying multiplier of 9.	(₹3200X12X9) = ₹345600
(v)	Loss of consortium	₹100000
(vi)	Loss of love and affection	₹100000
(iv)	Funeral expenses	₹25000
Total		₹570600

20. As a sequel of my discussion above, appeals have merit and are accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Ghasi Ram is enhanced from ₹80,000/- to ₹1,25,000/-, for death of Niranjan Singh from ₹6,34,000/- to ₹11,61,000/- and for death of Satnarayan from ₹2,78,800/- to ₹5,70,600/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions 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.

21. The amount of compensation awarded in case of **FAO No. 3775 of 2014** will be shared by claimants as follows:-

(i) Claimant no. 1-Wife : 50%

(ii) Claimants no. 2 and 3 (children) : 25% each

22. The share of claimants-appellants No. 2 and 3, who are minor, will be deposited in some nationalized bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding age of minor as required at the time of deposit of the

amount and they shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in their names after the date of their attaining majority. The above direction has been issued to save claimants from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after attaining the age of majority. Claimant no. 1-Sharda Devi, being mother and natural guardian of minor claimants shall be entitled to get interest on the share of minors deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of their brought up.

23. In **FAO No. 3777 of 2014**, 60% of the amount of compensation will be given to claimant no. 1-Murti wife of the deceased and remaining amount of compensation shall be equally distributed amongst other claimants i.e. claimants no. 2 to 7.

24. In the event of demise of any of the claimants before or after passing of award, compensation of his share shall be equally distributed amongst surviving claimants.

August 29, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No