IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4113 of 2014 (O&M)
Date of Decision : 02.08.2016

Sukhwinder Kaur and others ....Appellants

Versus

Ghansham and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Anoop Verma, Advocate
for the appellants.

Mr. Gitish Bhardwaj, Advocate
for respondent no.1.

Mr. Binat Sharma, Advocate
for Mr. A.S. Sidhu, Advocate
for respondent no. 3.

Surinder Gupta, J.

Claimants have filed appeal seeking enhancement of compensation as awarded by Motor Accident Claims Tribunal, Fatehgarh Sahib (later referred to as 'the Tribunal') for death of Jagwant Singh (later referred to as 'the deceased') husband of claimant-appellant no. 1, father of claimants-appellants no. 2 and 3 and son of claimants-appellants no. 4 and 5, who died on 30.12.2007 because of the injuries suffered by him on 28.12.2007 in a motor vehicle accident with Innova Car bearing registration no. PB-23-F-1288 (later referred to as 'the offending vehicle').

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

3. The Tribunal allowed compensation of ₹7,03,000/- to claimants, which was computed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Age of the deceased	32 years
(ii)	Income of the deceased	₹5100 per month
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	(₹5100-₹1700)= ₹3400 per month
(iv)	Compensation after applying multiplier of 16 as per age of claimants	(₹3400X12X16)= ₹652800
(v)	Funeral and transportation expenses	₹25000
(vi)	Loss of consortium	₹25000
Total		**₹702800 (rounded off to ₹703000**

4. Learned counsel for appellants has argued that the deceased was a contractor of bar binding and was also carrying on dairy farming business thereby earning ₹40,000/- per month. The Tribunal has assessed his monthly income as ₹5100/-, which is on lower side. The deceased left behind four dependants i.e. his wife, minor children and mother besides his father, who is also an old age person of 72 years and the Tribunal has wrongly made deduction of 1/3rd from his income towards personal expenses instead of 1/4th as per observations of Apex Court in ***Sarla Verma and ors. vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121*. The Tribunal has not allowed any compensation towards future prospects 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* and also towards loss of love and affection care and guidance for minor children. The Tribunal has not allowed any compensation towards loss of estate, love and affection for parents in view of observation of Apex Court in ***Vimal Kanwar and others***

vs. <u>Kishore Dan and others</u>, 2013 (7) SCC 476. Amount of ₹25,000/- allowed as compensation towards loss of consortium is also on lower side and calls for enhancement to ₹1 lac as per observation in ***Rajesh's case (supra)***.

5. Learned counsel for respondent no. 3 has argued that the Tribunal has assessed income of the deceased as a daily wager as no evidence was produced on record to prove that the deceased was earning ₹25,000/- as contractor and ₹15,000/- from dairy farming business. A person having this much of income is required to file income tax return but no such return has come on record. Monthly income of ₹5100/- taken by the Tribunal for a daily wager in the year 2007 is also on higher side and is more than minimum wages prescribed by the State for daily wagers. Compensation allowed by the Tribunal is just and reasonable keeping in view the price index prevailing at the relevant time.

6. Admittedly, claimants have failed to produce any evidence regarding income of the deceased. No evidence has come on record that the deceased was doing work of bar binding and was also having business of dairy farming. Sukhwinder Kaur-claimant no.1 while appearing as PW-3 has stated that the deceased was not maintaining any bank account or was also not paying any income tax. He had not done any degree or diploma of bar binding. He was not maintaining any record regarding his income from his business of bar binding or dairy farming.

7. In the absence of any evidence regarding business of dairy farming, the Tribunal has rightly assessed income of the deceased as ₹5100/- per month taking him as a daily wager. As per parameters laid down by Apex Court in ***Sarla Verma's case (supra)***, deduction of $1/4^{th}$ is to

be made from income of the deceased towards personal expenses as he had four dependants on his income. Minor children are also entitled to compensation of ₹1 lac towards loss of love and affection care and guidance while parents are entitled to compensation of similar amount towards loss of estate, love and affection. Compensation awarded to wife of the deceased as ₹25,000/- towards loss of consortium is also enhanced to ₹1 lac. As per observations of Apex Court in ***Rajesh's case (supra)*** and ***Munna Lal Jain's case (supra)***, claimants are also entitled to 50% addition in income of the deceased towards future prospects, who was 32 years of age.

8. The accident in this case took place on 28.12.2007. The deceased had died in hospital on 30.12.2007. Claimants have stated that ₹2000/- were spent on transportation. The Tribunal has not allowed any compensation for medical expenses and expenses of attendant. After the accident, deceased was first brought to Civil Hospital, Fatehgarh Sahib from where he was brought to PGI, Chandigarh and then again to Civil Hospital, Fatehgarh Sahib, where he succumbed to injuries on 30.12.2007. While taking the patient from one place to another place, claimants have also suffered expenses on transportation. Though, no evidence was brought regarding medical expenses but keeping in view the fact that deceased remained admitted in hospital for three days and was shifted from one hospital to other hospital, a lump sum amount of ₹20,000/- is awarded towards compensation for medical expenses, transportation charges and expenses of attendant.

9. In view of my above discussion, amount of compensation awardable to claimants is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Age of Jagwant Singh (deceased)	32 years
(ii)	Income of the deceased	₹5100 per month (as assessed by the Tribunal)
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	₹5100-₹1275= ₹3825 per month
(iv)	50% of (iii) to be added towards future prospects	₹3825+₹1913 = ₹5738
(v)	Compensation after multiplier of 16 is applied	(₹5738X12X16) = ₹1101696
(vi)	Loss of consortium	₹100000
(vii)	Loss of love and affection care and guidance for minor children	₹100000
(viii)	Loss of estate, love and affection for parents	₹100000
(ix)	Compensation for funeral expenses	₹25000
(x)	Compensation for medical expenses, transportation charges and attendant charges	₹20000
Total		**₹1446696 (rounded off to ₹1446700)**

10. 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 ₹7,03,000/- to ₹14,46,700/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition 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. The share of claimant-appellant No. 3, who is minor, will be deposited in some nationalized bank as fixed deposit till the period he attains 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 he shall not be

asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in his name after the date of his attaining majority. The above direction has been issued to save the claimant 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-Sukhwinder Kaur, being mother and natural guardian of minor claimant 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 his brought up. Counsel fee is assessed at ₹20,000/-.

August 02, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No