IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 2591 of 2015 (O&M)
Date of Decision : 10.05.2016

Paramjeet Kaur and others .....Appellants

Versus

Hussan Singh and others .....Respondents

2. FAO No. 1267 of 2015 (O&M)

National Insurance Co. Ltd. .....Appellant

Versus

Paramjeet Kaur and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Saurabh Bajaj, Advocate
for the appellant in FAO No. 2591 of 2015.

Mr. T.R. Sharma, Advocate
for respondents no. 1 and 2 in FAO No. 2591 of 2015
and for respondents no. 4 and 5 in FAO No. 1267 of 2015

Ms Shamsher Kaur, Advocate
for respondent no. 3 in FAO No. 2591 of 2015 and
for appellant in FAO No. 1267 of 2015.

<u>Surinder Gupta, J.</u>

Both the above captioned appeals have been filed against award dated 14.10.2014 passed by Motor Accident Claims Tribunal, Karnal (later referred to as 'the Tribunal') allowing compensation for death of Kulwant Singh husband of claimant no. 1 and father of claimants no. 2 and 3 Gurinderjeet Kaur and Sukhjeet Singh.

2. As the only point pressed in both the appeals is seeking of enhancement of compensation (in FAO No. 2591 of 2015) and reducing of compensation as awarded by the Tribunal (in FAO No. 1267 of 2015), detailed facts of the case are being

skipped for the sake of brevity.

3. The accident took place on 20.05.2013. As per claimants the deceased was a registered medical practitioner and on the fateful day, he was going on his scooter bearing registration no. HR-05B-1513 towards Naraingarh, District Ambala when he was hit by vehicle bearing registration no. HP-14A-2923 (Bolero) (later referred to as 'the offending vehicle').

4. The Tribunal took age of the deceased as 55 years and relying on income tax returns placed on file as Ex. P-1 and Ex. P-2, for the assessment year 2012-2013 and 2011-2012 respectively, allowed compensation calculated as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Kulwant Singh	₹14900 per month or ₹1,78,800 p.a.
(ii)	Deduction 1/3rd as number of dependents are three	₹59600
(iii)	Multiplier (annualized)	11
(iv)	Loss of dependency	₹119200x11 = 1311200
(v)	Loss of consortium	₹100000
(vi)	Loss of love and affection	₹100000
(vii)	Funeral expenses	₹25000
	Total	₹1536200

5. In FAO No. 2591 of 2015 filed by claimants seeking enhancement of compensation, learned counsel for appellants has argued that the Tribunal has not allowed any addition in income of the deceased towards his future prospects as per observations in case 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. He has further argued that the Tribunal has also not allowed compensation for loss of estate to claimants.

6. Learned counsel for Insurance Company in FAO No. 1267 of 2015, has argued that the Tribunal has ignored the best evidence available on record regarding age of the deceased and has wrongly taken age of the deceased as 55 years as mentioned in postmortem report while applying multiplier of 11. In income tax returns of the deceased, copies of which have been relied upon by claimants themselves, date of birth of the deceased is mentioned as 01.05.1957, which shows that the deceased was 56 years and 19 days of age at the time of accident, as such, the multiplier attracted in this case is of 9. While relying on the norms regarding grant of addition in income of deceased in a motor vehicle accident towards future prospects, settled in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, learned counsel for the Insurance Company has argued that claimants are not entitled to any addition in income of the deceased towards future prospects. She has further argued that the Tribunal has allowed interest @ 12% per annum on the amount of compensation, which is required to be reduced to 6% per annum as awarded by the Apex Court in case of ***Manasvi Jain vs. Delhi Transport Cooperation, 2014 (3) RCR (Civil) 313.***

7. Replying the arguments of learned counsel for Insurance Company, learned counsel for claimants has argued that the Tribunal has rightly relied on age of the deceased as mentioned in postmortem report, which was a reliable document.

There may be mistake in mentioning the date of birth of the deceased in income tax returns, as such, the same cannot be relied upon. On the point of interest, learned counsel for claimants has argued that the Tribunal has rightly allowed interest @ 12% per annum, which is the prevalent rate of interest.

8. On giving a careful thought to submissions of learned counsel for parties, I find that following questions call for determination in these appeals:-

(i) What was age of the deceased at the time of accident?

(ii) Whether claimants are entitled to addition in income of the deceased towards future prospects?

(iii) Whether claimants are entitled to future interest @ 12% per annum as allowed by the Tribunal or it is required to be reduced? If so, to what extent?

AGE OF THE DECEASED

9. Perusal of award shows that the Tribunal took into consideration age of the deceased as mentioned in postmortem report (Ex. P-12). However, the Tribunal ignored the other documents placed on file i.e. income tax returns of the deceased for the financial year 2010-2011 and 2011-2012. In the income tax return for the financial year 2011-2012 (Ex. P-1), date of birth of the deceased is mentioned as 01.05.1957. Same date of birth finds mention in income tax return for the financial year

2010-2011 (Ex. P-2). In PAN card and driving licence, copies of which have been placed as Ex. P-5 and Ex. P-8 respectively, date of birth of the deceased is mentioned as 01.05.1957. The above documents were relied upon by claimants wherein date of birth of the deceased specifically finds mention. These documents being admission on the part of claimants are binding and the best evidence available on record to determine age of the deceased at the time of accident. The submission of learned counsel for claimants that there may be mistake in income tax returns while mentioning date of birth has no basis and appears to be an argument advanced only to wriggle out of these documents. The other documents like PAN card and driving licence also give date of birth of the deceased as 01.05.1957. Age of the deceased in the hospital at the time of postmortem report is written by approximation and not on the basis of some document. It is a usual practice that doctor mentions age of the deceased as disclosed to him by the attendants, relatives or police or at the most he can give his observation of age as per appearance of dead body. Age of the deceased as mentioned in postmortem report cannot be a reason to overlook the definite and reliable evidence on record which was produced by none else then claimants themselves.

10. In view of my above discussion, age of the deceased as per documents placed on file is taken on the date of accident i.e. 20.05.2013 as 56 years and 19 days and multiplier as per norms well settled in case of ***Sarla Verma (supra)*** attracted to this case is of 9 and not of 11.

FUTURE PROSPECTS

11. In case of ***Rajesh (supra)***, a three Judges Bench of the Apex Court after taking note of the observations in case of ***Sarla Verma (supra)*** regarding grant of future prospects, observed in para 11 and 12 as follows:-

> *11. Since, the Court in* ***Santosh Devi's case*** *(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.*

12. As per above observations, claimants are also entitled to 15% addition in income of the deceased, who was a registered medical practitioner and was income tax assessee, towards future prospects.

INTEREST

13. In case of ***Rajesh (supra)***, the Apex Court has allowed interest on amount of compensation awarded to the claimant as 7.5% per annum. Though, in some earlier judgments interest was also allowed at different rates like 6%, 9% and 12% but keeping in view the present scenario and rate of interest prevailing in market, I am of the considered opinion that rate of interest as awarded by the Apex Court in case of ***Rajesh (supra)*** can be awarded to claimants. Interest allowed by the Tribunal @ 12% per annum is on higher side and same is reduced to 7.5% per annum.

14. The Tribunal has allowed compensation of ₹1 lac towards loss of consortium to wife and ₹1 lac towards loss of love and affection for children of the deceased, which is just and reasonable. However, claimants are not entitled to compensation for loss of estate.

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

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Kulwant Singh as assessed by the Tribunal	₹14900 per month
(ii)	15% of (i) above to be added as future prospects	₹14900+₹2235 = ₹17135 per month
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	₹17135-₹5712 = ₹11423 per month

(iv)	Compensation after multiplier of 9 is applied	(₹11423X12X9) = ₹1233684
(v)	Loss of consortium	₹100000
(vi)	Loss of love and affection	₹100000
(vii)	Funeral expenses	₹25000
	Total	₹1458684

16. As a sequel of my above discussion, both the appeals i.e. FAO no. 2591 of 2015 filed by claimants and FAO No. 1267 of 2015 filed by the Insurance Company are party accepted and amount of compensation to which claimants are entitled is reassessed as above. Claimants shall also be entitled to interest @ 7.5% per annum on amount of compensation from the date of filing of the claim petition till actual realization. The Insurance Company shall be at liberty to recover excess amount, if any, paid to claimants by way of execution.

17. Keeping in view facts and circumstances of both the cases, parties are left to bear their own costs.

May 10, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

JITENDER KUMAR
2016.05.18 17:34
I attest to the accuracy and
integrity of this document