In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:31.8.2016

FAO No. 279 of 2015

Jarnail Singh and others

---Appellants

vs.

Sepoy Sunil Kumar and another

---Respondents

FAO No. 1096 of 2015(O&M)

Gurmeet Kaur and others

---Appellants

vs.

Sepoy Sunil Kumar and another

---Respondents

FAO No. 9344 of 2014(O&M)

Harbhajan Singh and another

---Appellants

vs.

Sepoy Sunil Kumar and another

---Respondents

FAO No. 4518 of 2015(O&M)

Jarnail Singh

---Appellant

vs.

Sepoy Sunil Kumar and another

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

***

Present: Mr.Sanjeev Soni, Advocate
for the appellant (s)

Mr.O.P.Dabla, Advocate
for Union of India-respondent No. 2

***

Rekha Mittal, J.

CM No. 811-CII of 2015 in FAO-279 of 2015
CM No. 2905-CII of 2015 in FAO-1096 of 2015
CM No. 25906-CII of 2014 in FAO-9344 of 2014
CM No. 14444-CII of 2015 in FAO-4518 of 2015

Prayer in these applications is for condoning delay of 235, 308, 160 and 235 days respectively in filing the appeals.

In view of averments made in the applications supported by affidavits of the appellant(s) coupled with the factum that provisions of the

Motor Vehicles Act for grant of compensation are benevolent social legislation to save the victim family of the financial loss caused due to accident, the applications are allowed, delay of 235, 308, 160 and 235 days respectively in filing the appeals stands condoned subject, however, to the condition that in case the compensation is enhanced, the applicants-appellants shall not be entitled to interest for the period of delay.

CM No. 14443-CII of 2015 in FAO-4518 of 2015

Prayer in this application is for condoning delay of 127 days in re-filing the appeal.

In view of averments made in the application, arguments advanced by counsel for the appellant, the application is allowed and delay of 127 days in re-filing the appeal is condoned.

Main cases

This order will dispose of FAO No. 279 of 2015, 1096 of 2015, 9344 of 2014 and 4518 of 2015 as these have emerged out of the same accident that took place on 2.2.2012.

FAO No. 279 of 2015

The instant appeal has been preferred by claimants Jarnail Singh. Hukamjit Kaur and Harkamaljit Kaur, husband and daughters, respectively of deceased Gurpreet Kaur for enhancement of compensation.

The Motor Accidents Claims Tribunal, Bathinda (in short "the Tribunal") has assessed notional income of the deceased at Rs. 15,000/- per annum, deducted 1/3rd for personal expenses, adopted multiplier of 17 and computed loss of dependency to the tune of Rs. 1,70,000/-. Under conventional heads, a sum of Rs.5000/- has been awarded on account of loss of consortium and Rs. 5000/- for funeral expenses making total compensation to the tune of Rs. 1,80,000/- payable alongwith interest at the rate of 7.5% per annum from the date of petition till realization.

Counsel for the appellants has submitted that income assessed by the Tribunal is on lower side; benefit of increase in income for future prospects requires to be granted and compensation awarded under conventional heads needs re-look and enhancement.

Counsel for respondent No. 2 has submitted that there is no infirmity in the findings recorded by the learned Tribunal.

The Tribunal has assessed income of the deceased on notional basis at Rs. 15000/- per annum. The occurrence in question took place on 2.2.2012. The deceased left behind a family consisting of her husband and two daughters, therefore, the family members have been deprived of services of the deceased. Taking a clue from the judgment ***Lata Wadhwa vs. State of Bihar 2001(4) RCR (Civil) 673,*** value of services of the deceased is assessed at Rs. 5000/- per month. In view of Division Bench judgment of this Court ***Paramjit Singh and another vs. Dilbagh Singh @ Bagga and others 2014(4) AICJ 65***, no deduction is permissible in the circumstances of the present case. The Tribunal has rightly applied multiplier of 17. Loss of dependency is calculated at Rs. 10,20,000/- (Rs. 5000 x 12 x17).

Under conventional heads, Jarnail Singh, husband is awarded Rs. 1,00,000/- for loss of consortium. Hukamjit Kaur and Harkamaldeep Kaur, daughters are awarded Rs. 1.5 lakh in equal share for loss of love and affection and the claimants are awarded Rs. 25,000/- for expenses on funeral.

In view of the above, total compensation is Rs. 12,95,000/- and the enhanced compensation is Rs. 11,15,000/- (Rs. 12,95,000/- munis 1,80,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization. The enhanced compensation shall be payable to daughters of the deceased in equal share and deposited in fixed deposit receipts and payable to them on attaining the age of majority. The interest accrued on the FDRs shall be payable to father of the minors for meeting expenses on their education and living.

FAO No. 1096 of 2015

The Tribunal has assessed income of the deceased at Rs. 6000/- per month, deducted 1/3rd towards personal expenses, adopted multiplier of 16 and computed loss of dependency to the extent of Rs.7,68,000/-. In addition, an amount of Rs. 5000/- each for funeral and loss of consortium has been awarded. Another amount of Rs. 1,40,911/- in regard to medical expenses has been awarded making total compensation of Rs.9,18,911/-.

Counsel for the claimants has submitted that the Tribunal has not allowed benefit of future prospects and compensation for loss of love and affection to the children.

The Tribunal has assessed income of the deceased at Rs. 6000/-

per month on the basis of wage of an unskilled worker. As the deceased was 30 years old, claimants are awarded benefit of increase in income for future prospects to the extent of 50% in the light of judgment ***Rajesh and others vs. Rajbir Singh and others (2013)3 RCR (Civil) 170***. Hence loss of dependency is calculated at Rs. 7,68,000/- + Rs.3,84,000 (50% future prospects) =Rs.11,52,000/-.

The widow is awarded an amount of Rs. 1,00,000/- for loss of consortium. Minor children are awarded Rs. 1,50,000/- in equal share and mother is allowed Rs. 50,000/- for loss of love and affection. The appellants shall be entitled to an amount of Rs. 25,000/- each for funeral expenses and loss of estate. The total compensation comes to Rs. 15,02,000/- and the enhanced compensation is Rs.5,83,089/- (Rs. 15,02,000/- minus 9,18,911/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to widow and children of the deceased in equal share. The share of the minors shall be deposited in fixed deposit receipts payable on their attaining the age of majority. Interest accrued on the FDRs shall be payable to mother of the minors for meeting expense on their education and living. The enhanced compensation payable to the widow shall be deposited in FDR for a period of two years.

FAO-9344 of 2014

The Tribunal has assessed in come of the deceased at Rs. 15,000/- per annum, deducted 1/3rd towards personal expenses and adopted multiplier of 16 and computed loss of dependency to the tune of Rs.1,60,000/-. In addition, a sum of Rs. 5000/- has been awarded for funeral expenses making total compensation at Rs.1,65,000/-.

Counsel for the appellants has submitted that the income assessed by the Tribunal is on lower side and claimants are entitled to benefit of additional income for future prospects.

The deceased was 17 ½ years old at the time of death. There is nothing on record suggestive of the fact that he was incapacitated to work and earn the minimum wage fixed for an unskilled worker by the Government of Punjab. Taking a clue from the minimum wage available in February 2012 in the State of Punjab, income of the deceased is assessed at Rs. 4016/- per month (rounded off to Rs. 4000/- per month). The claimants shall be entitled to benefit of increase in income for future prospects to the extent of 50% in the light of judgment ***Rajesh and others vs. Rajbir Singh and others (2013)3 RCR (Civil) 170***. After permitting deduction to the extent of 50% and adopting a multiplier of 18, loss of dependency comes to Rs. 4000 x12 x18 =Rs. 8,64,000/- + 4,32,000(50% increase) =Rs.12,96,000/- minus Rs.6,48,000/- (50%) = Rs.6,48,000/-.

The mother of the deceased is awarded Rs. 50,000/- for loss of love and affection and the claimants are allowed Rs. 25,000/- for funeral expenses. The total compensation comes to Rs. 7,23,000/- and enhanced compensation is Rs. 5,58,000/- payable exclusively to mother of the deceased, alongwith interest at the rate of 7.5% per annum from the date of petition till realization.

FAO-4518 of 2015

The appellant, father of deceased Jashanpreet Kaur has prayed for grant of compensation for the loss of his daughter aged 1 ½ years.The learned Tribunal has awarded compensation to the tune of Rs.1,55,000/- including Rs. 5,000/- for funeral expenses.

Counsel for the appellants contends that the compensation awarded by the Tribunal is on lower side and liable to be enhanced.

Counsel for the insurance company would submit that there is no error or infirmity in the findings recorded by the Tribunal, therefore, the appeal is liable to be dismissed.

I have heard counsel for the parties and perused the records.

The deceased child was admittedly 1 ½ years old when she unfortunately died in a motor vehicular accident. Hon'ble the Supreme Court of India in ***Puttamma and others vs. K.L Narayana Reddy and another 2014(1) RCR(Civil) 443*** has summed up certain principles in para 40 of the judgment, quoted hereunder:-

> *(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in*
> *Column(4) of the table prepared in Sarla Verma read with para 42 of that judgment.*
> *(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the*
> *Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.*

(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) to (vi) XXXX XXXX XXXX

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration."

The Tribunal has rightly assessed income of the deceased at Rs. 15,000/- per annum as per second schedule of the Act. The loss of dependency comes to Rs. 15000 x 15 = Rs. 2,25,000/-.

The appellant is awarded an amount of Rs. 75,000/- for loss of love and affection. He is further held entitled to Rs. 25000/- for funeral expenses. The total compensation comes to Rs. 3,25,000/- and the enhanced compensation is Rs. 1,70,000/- payable with interest at the rate of 7.5% from the date of petition till realization.

Before parting with this judgment, it is necessary to clarify that in all the appeals, the claimants shall not be entitled to interest for the period of delay in view of the condition imposed while disposing of applications for condonation of delay.

Appeals stand disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

31.8.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No