IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3231 of 2015 (O&M)
Date of Decision : 22.12.2016

Seema and others ....Appellants

Versus

Raj Kumar and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Inderjeet Singh, Advocate
for the appellants.

Mr. Rajbir Singh, Advocate
for Mr. Sanjeev Goyal, Advocate
for respondent no. 3.

Surinder Gupta, J.

This is appeal by claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Yamunanagar (later referred to as 'the Tribunal') for death of Naresh Kumar (later referred to as 'the deceased'), in a motor vehicle accident on 04.03.2012 with a canter bearing registration no. PB-10-BU-4517 (later referred to as 'the offending vehicle').

2. As the issue involved in this appeal is claim of appellants seeking enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. Compensation of ₹9,40,000/- allowed by the Tribunal to claimants, was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Naresh Kumar
(ii)	Age of the deceased	35 years
(iii)	Annual income of the deceased	₹76650/-

(iv)	Deduction of 1/4th applied by the Tribunal	(₹76650-₹19165)= ₹57485 per annum (rounded off to ₹57500)
(v)	Amount of dependency after applying multiplier of 16	(₹57500x16)= ₹920000 per annum
(vi)	Loss of consortium for wife	₹10000
(vii)	Loss of estate for parents	₹5000
(viii)	Funeral expenses	₹5000
Total		**₹940000**

4. Learned counsel for appellants has argued that the deceased was employed as boiler operator in a plywood factory. He was 32 years of age. The Tribunal equated him with a daily wager and took his salary as ₹210/- per day, which is on lower side. However, he has not disputed the income of the deceased as assessed by the Tribunal but has sought enhancement of compensation on following points:-

(i) As per observations of Apex Court 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,** claimants are entitled to addition in income of the deceased towards future prospects.

(ii) Minor children of the deceased i.e. claimants no. 2 and 3 are also entitled to compensation for loss of love and affection, care and guidance.

(iii) The Tribunal awarded the compensation of ₹10,000/- to wife of the deceased for loss of consortium, which is on lower side.

(iv) The compensation awarded towards loss of estate and funeral expenses are also not adequate and call for enhancement keeping in view the fact that the accident had taken place in the year 2012.

5. Learned counsel for respondent no. 3-Insurance Company has argued that the Tribunal took income of the deceased as that of a daily wager as ₹210/- per day. However, while computing the annual income of the deceased, his daily income was multiplied with 365 days. It is a matter of common knowledge that no one gets employment for all 365 days of the year. There are 52 Sundays in a year and the Tribunal should have deducted the wages of 52 days from annual income of the deceased. Regarding the submission of learned counsel for appellants for grant of addition in income of the deceased towards future prospects, he has argued that the matter is still under consideration in a reference made to a larger Bench of Apex Court in case of ***National Insurance Company Limited* vs. *Pushpa and others*, 2015 (9) SCC 166**.

6. Firstly, I take the question of income of the deceased as assessed by the Tribunal. Claimant-Seema while appearing as PW-3 has stated that her husband was working in a plywood factory but she could not produce any evidence in support of her statement which led the Tribunal to take income of the deceased as that of a daily wager. I find substance in the submission of learned counsel for respondent no. 3 that a daily wager does not get employment on all 365 days of the year and it can be safely presumed that a daily wager avails holiday at least on all 52 Sundays, which fell in a year. At the same time, this fact is to be taken care that the deceased was in fact not a daily wager but his income was assessed equating him with

a daily wager as claimants could not produce evidence of his employment and income as boiler operator in a plywood factory.

7. Even a daily wager was earning around ₹6000/- per month in the year 2012. The Tribunal has only applied formula of calculating the wages by assuming income of the deceased as ₹210/- per day, not on the basis of material on record but only on guess work. I am of the considered opinion that income of the deceased assessed around ₹6300/- per month is not on higher side and find no reason to interfere with the discretion exercised by the Tribunal to this effect.

8. This contention of learned counsel for appellants that addition in income of the deceased should not have been allowed as per observations of Apex Court in cases of ***Rajesh (supra)*** and ***Munna Lal Jain (supra)*** because the matter is still pending before Apex Court in a reference made in case of ***Pushpa (supra)*** also has no merits.

9. Till date, it is a settled proposition of law by the Apex Court that claimants are entitled to addition in income of the deceased towards future prospects as per parameters laid down in cases of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another,*** ***(2009) 6 SCC 121***, ***Rajesh (supra) and Munna Lal Jain (supra)***. While making reference to larger Bench on the quantum of grant of addition in income towards future prospects in the income of a victim of motor vehicle accident, who is self employed and while differing with the view taken in case of ***Sarla Verma (supra),*** Apex Court observed in ***Pushpa's case (supra)*** 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."

10. In case of ***Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54,** 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 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*

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

> *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.* "

11. Reference was made to a larger Bench of Hon'ble Apex Court in case of ***Pushpa (supra)*** on 02.07.2014. In the 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)***.

12. 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, a mason, a carpenter or a daily wager. It is a matter of common knowledge that stitching charges, labour charges and daily wages have increased manifold during last two decades due to increase in expenses of material/labour charges/margin etc. 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.

13. In this case the deceased was husband of claimant no. 1, father of claimants no. 2 and 3 and son of claimants-respondents no. 4 and 5. A person in his capacity as husband, father and son performs various other duties for the family, which also justify the grant of addition towards his monthly income. He looks after and manages all the family affairs like bank accounts, LPG connection, payment of electricity and water bills, fee of school and college going children, their career, medical and health care of family etc. Services rendered by him also carry value on the same terms as services rendered by a house-wife. This is another aspect on which I find the grant of addition in income of the deceased towards future prospects as justified.

14. The Tribunal has not allowed any compensation towards loss of love and affection care and guidance to minor children of the deceased, which is assessed as ₹1 lac. Compensation awarded by the Tribunal towards loss of consortium for wife of the deceased is also enhanced to ₹1 lac and towards loss of estate, love and affection for parents to ₹1 lac. Funeral expenses awarded by the Tribunal as ₹5000/- is also on lower side and the same is enhanced to ₹25,000/-.

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

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Naresh Kumar
(ii)	Age of the deceased	35 years
(iii)	Annual income of the deceased (as assessed by the Tribunal)	₹76,650

(iv)	50% of (iii) above to be added as future prospects	(₹76650+₹38325)= ₹114975 per annum (rounded off to ₹115000)
(v)	1/4th of (iv) deducted as personal expenses of the deceased	₹115000 - ₹28750) = ₹86250 per annum
(vi)	Amount of dependency after multiplier of 16 is applied	(₹86250X16) = ₹1380000 per annum
(vii)	Loss of consortium for the wife	₹100000
(viii)	Loss of love and affection care and guidance for the children	₹100000
(ix)	Loss of estate, love and affection for parents	₹100000
(x)	Compensation for funeral expenses	₹25000
Total		**₹1705000**

16. As a sequel of my discussion above, the instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Gurtej Singh is enhanced from ₹9,40,000/- to ₹17,05,000/-. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of the claim petitions till actual realization. Respondent no. 3-Insurance Company being insurer of the offending vehicle will deposit the share of claimants no. 1, 4 and 5 in their bank accounts or pay the same through demand drafts. 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 name 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 minor claimant

has attained age of majority. Claimant no. 1-Seema, being mother and natural guardian of minor claimants shall be entitled to get interest on the share of minor deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of their brought up.

17. In the event of demise of any of the claimants before or after passing of award, compensation of his/her share shall be paid to surviving claimants.

December 22, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*