

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

(1)

FAO No.5741 of 2013 (O&M)

Date of decision : 04.05.2016

Smt. Omwati Verma

.....Appellant

Versus

Gurmail Singh and others

...Respondents

(2)

FAO No.4943 of 2013 (O&M)

Date of decision : 04.05.2016

Smt. Sita Devi

.....Appellant

Versus

Gurmail Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Ashit Malik, Advocate for appellants in both the appeals.

Mr. R.S. Madan, Advocate for respondent No.3.

DARSHAN SINGH, J.

CM-23980-CII-2013 in
FAO No.5741 of 2013

There is delay of 209 days in filing the present appeal. The
appellant has filed an application under Section 5 of the Limitation Act

for condonation of delay.

Learned counsel for the applicant-appellant submitted that she will not claim the interest on the enhanced amount of compensation, if any, for the period of delay caused in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 209 days in filing the present appeal is hereby condoned.

Main Appeals

This judgment of mine shall dispose of both the appeals mentioned above, which have been arisen out of the same award dated 22.11.2012 passed by the learned Motor Accidents Claims Tribunal, Ambala (hereinafter called the 'Tribunal') vide which Smt. Sita Devi and another, the appellants of FAO No.4943 of 2013 have been awarded compensation to the tune of Rs.3,33,000/- as compensation on account of death of their son Sohan Verma, and Smt. Omwati Verma, the appellant of FAO No.5741 of 2013 has been awarded compensation to the tune of Rs.3,95,000/- as compensation on account of death of her son Nitin Kumar Verma in the motor vehicular accident, which took place on 06.06.2011.

2. Both these appeals have been preferred by the appellants-claimants for enhancement of the amount of compensation.

3. Learned counsel for the appellants-claimants contended

that in FAO No.5741 of 2013 deceased Nitin Kumar Verma was the student of the final year of Mechanical Diploma. The Tribunal has taken his notional income only to the tune of Rs.5000/- per month which is on lower side. He contended that at least his income should have been taken to be Rs.15,000/- per month. He relied upon cases ***Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma and another 2014(4) RCR (Civil) 543*** and ***V. Mekala Vs. M. Malathi and another 2014(2) RCR (Civil) 880***.

4. He further contended that the learned Tribunal has applied wrong multiplier in both the cases as per the age of the claimants. It should have been applied as per the age of the deceased. He relied upon case ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***.

5. He further contended that no amount has been awarded towards love and affection and less amount has been awarded towards funeral expenses and loss to estate. Thus, he contended that the just compensation has not been awarded to the claimants by the learned Tribunal.

6. On the other hand, learned counsel for the respondent-Insurance Company contended that the income of deceased Nitin Kumar Verma has been rightly taken by the learned Tribunal. He was only a student and non-earning member. There is no scope for enhancement of notional income of deceased Nitin Kumar Verma.

7. He further contended that the learned Tribunal has taken into consideration all the heads while computing the compensation. Thus, he contended that no case is made out for enhancement of the amount of compensation.

8. I have duly considered the aforesaid contentions.

9. Firstly, I take up FAO No.5741 of 2013. Deceased Nitin Kumar Verma in this case was 21 years of age. As per the discussion by the learned Tribunal it comes out that deceased Nitin had completed his Diploma in Mechanical Engineering in June, 2010 and was declared as pass by the Institute of Advance Studies in Education Deemed University. He has obtained more than 80% marks in the said course. It appears that he was a brilliant student. The learned Tribunal has taken the notional income of deceased Nitin Kumar Verma at the rate of Rs.5000/- per month. But in view of the fact that deceased Nitin Kumar Verma was having the technical and professional education, he was the brilliant student having obtained more than 80% marks and had a bright future, so notional income of the deceased taken by the Tribunal is on lower side. The notional income of deceased Nitin Kumar Verma shall be taken to be Rs.7000/- per month *i.e.* Rs.84,000/- per annum.

10. The learned Tribunal has rightly deducted 50% of the income of the deceased towards his living and personal expenses as the deceased was unmarried and the claimants are his mother and brother. So, the remainder comes to Rs.42,000/-. The learned Tribunal has applied

the multiplier of 13 as per the age of the mother of the deceased which is not legally correct. As per the law laid down by the Hon'ble Apex Court in case *Munna Lal Jain and another Vs. Vipin Kumar Sharma and others* (supra), the multiplier is to be applied as per the age of the deceased and not as per the age of the dependents. The deceased was 21 years of age. So, the multiplier of 18 shall be applicable. The loss of dependency comes to Rs.7,56,000/-.

11. The learned Tribunal has just awarded Rs.4500/- as loss to estate and funeral expenses. No amount has been awarded towards loss of love and affection. Appellant-claimant Smt. Omwati shall be entitled to a sum of Rs.1,00,000/- towards loss of love and affection of her son. Rs.4500/- awarded by the learned Tribunal shall be considered only towards loss to estate. In addition to that, the appellant shall be entitled to a sum of Rs.25,000/- towards funeral expenses. In this way, the total amount of compensation comes to Rs.8,85,500/- payable to the appellant of FAO No.5741 of 2013 instead of Rs.3,95,000/- as awarded by the learned Tribunal.

12. In FAO No.4943 deceased Sohan Verma was 18 years of age. He was unmarried and was student of 10th class. So, the learned Tribunal has rightly taken his notional income to be Rs.4200/- per month *i.e.* Rs.50,400/- per annum. The learned Tribunal has rightly deducted 50% of the income of the deceased towards his personal and living expenses. The remainder comes to Rs.25,200/-. However, the learned

Tribunal has wrongly applied the multiplier of 13 as per the age of the claimants. The deceased was only 18 year of age. As per the law laid down by the Hon'ble Apex Court in case ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others*** (supra), the multiplier should have been applied as per the age of the deceased. So, the multiplier of 18 shall be applicable. The loss of dependency comes to Rs.4,53,600/-.

13. The learned Tribunal has just awarded Rs.4500/- as loss to estate and funeral expenses. No amount has been awarded towards loss of love and affection. Appellant-claimant Smt. Sita Devi shall be entitled to a sum of Rs.1,00,000/- towards loss of love and affection of her son. Rs.4500/- awarded by the learned Tribunal shall be considered only towards loss to estate. In addition to that, the appellant shall be entitled to a sum of Rs.25,000/- towards funeral expenses. In this way, the total amount of compensation comes to Rs.5,83,100/- payable to the appellant of FAO No.4943 of 2013 instead of Rs.3,33,000/- as awarded by the learned Tribunal.

14. Thus, keeping in view my aforesaid discussion, both the appeals are hereby partly allowed. In FAO No.5741 of 2013, the amount of compensation is enhanced to Rs.8,85,500/- from Rs.3,95,000/- and in FAO No.4943 of 2013, the amount of compensation is enhanced to Rs.5,83,100/- from Rs.3,33,000/-, as awarded by the learned Tribunal. The appellants-claimants shall also be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the

date of filing the petitions till realisation, except for the period of 209 days *i.e.* the delay caused by the appellants in filing the present appeal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

04.05.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**