IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.606 of 2013
Date of decision : July 13, 2016.

Sumundri Devi and others .... Appellants

Vs.

Randhir Singh and others .... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Mr. Amit Arora, Advocate,
for the appellants.

None for the respondents.

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AMOL RATTAN SINGH, J.

This is an appeal by the claimants before the learned Motor Accident Claims Tribunal, Faridabad, seeking enhancement of the compensation of Rs.4,90,200/- awarded to them, alongwith 7.5% interest per annum thereupon, on account of the death of Ram Chander, in a motor vehicle accident that took place on 30.08.2010.

Appellant No.1 is the widow of the deceased and appellant No.2 to 9 the children of the deceased, of whom appellant No.3 to 9 are shown to be minors on the date of the death of their father.

2. The facts, as taken from the impugned Award of the learned Tribunal, are that at about 3:00 am on 30.08.2010, Ram Chander was sleeping at the shop of one Surender Verma on the main road, Bhud Colony, Old Faridabad, and when he was going to answer the call of nature, a Mahindra XYLO No.HR-

26AZ-0274, hit him, allegedly having been driven in a rash and negligent manner at a high speed, by respondent No.2 herein.

The said vehicle is shown to be owned by respondent No.1 and insured by respondent No.3.

The late Ram Chander is stated to have been working as a Chowkidar at night, in the area of Sectors 28 and 29, Faridabad, and was doing the the work of a labourer during the day, earning Rs.9000/- per month.

After his death, it was pleaded that his widow and children had lost their only bread earner and therefore claimed Rs.10,00,000/- by way of compensation.

3. Respondent No.1 filed his written statement before the Tribunal, taking preliminary objections with regard to maintainability and locus standi and, on merits, totally denying the accident and the contents of the claim petition.

Respondent No.2, i.e. the driver of the vehicle, also took the same preliminary objections and other than that, stating that, in fact, he was not even an employee of respondent No.2 on the alleged date of the accident, as he had resigned much prior thereto, because of a financial dispute between him and his employer. It was further alleged that his salary had also been withheld by respondent No.1, due to which the said respondent had named him (respondent No.2) falsely in the FIR concerning the accident, only to avoid making payment of salary and to avoid litigation in the present case.

He further submitted that he was never 'challaned' by the police with regard to the accident and he only came to know of it when a registered cover reached his house, in his presence.

4. The insurance company (respondent No.3) in its written statement also took the same preliminary objections and further stated that the driver of the

vehicle was not holding a valid driving licence and that the terms and conditions of the insurance policy had been breached.

On merits, it was pleaded that the vehicle in question had been falsely involved and no accident took place with the said driver. Other contentions with regard to the age, income and profession of the deceased, were also denied.

5. From the pleadings of the parties, the following issues were framed:-

1. Whether the present accident resulting into the death of Ram Chander Sham has taken place due to rash and negligent driving of vehicle Mahindra XYLO bearing registration No.HR-26-AZ-0274 by respondent No.1? OPP
2. If issue No.1 is proved to what amount of compensation, petitioners are entitled to and if so from whom? OPP
3. Whether the petition is not maintainable in the present form? OPR3
4. Whether the petitioners have no locus standi to file the present petition? OPR3
5. Whether the petition is bad for min-joinder of necessary parties? OPR3
6. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR3.
7. Relief."

6. As recorded in the impugned Award, respondents No.1 and 2 thereafter failed to turn up for evidence and were proceeded against *ex parte.*

7. Upon appraisal of the evidence, including the testimony of the eye witness, the learned Tribunal came to the conclusion that with the vehicle in question having been recovered from the spot, in a condition where it had turned turtle, the accident itself could not be doubted. Hence, the negligence of respondent No.2 was also established by the Tribunal, with no rebuttal thereto.

In any case, the respondents not being in appeal against any finding of the Tribunal, that issue is not required to be gone into by this Court.

8. As regards the compensation to be paid to the claimants, the learned Tribunal found that there was no evidence on record to prove that the deceased was earning Rs.9000/- per month by working as a labourer and Chowkidar. However, he being a hale and hearty person otherwise, with a large family to support, it was further held by the Tribunal that he could have been easily earning Rs.4500/- per month or Rs.54,000/- per annum, as an unskilled labourer (in the year 2010).

Seeing that he had nine dependents, i.e. his widow and eight children, the Tribunal deducted 1/5th of that income towards the personal living expenses of the deceased, thereby coming to a loss of dependent income of Rs.43,00/- per annum, to the claimants.

9. To the aforesaid income, a multiplier of 11 was applied, taking the deceased to be in the age group of 51 to 55 years, in view of the fact that on his voter identity card of 2003, he was shown to be 45 years old and in his ration card, he was shown to be 50 years old.

Thus, the total loss of dependent income to the appellants herein, was held to be Rs.4,75,200/- by the Tribunal.

In addition to the above, Rs.5000/- towards the funeral expenses, Rs.5000/- towards loss of estate and Rs.5000/- towards loss of consortium to appellant No.1, were also awarded, thereby bringing the total compensation payable to the appellants-claimants to be Rs.4,90,200/-.

10. The insurance company having proved that the licence of respondent No.2 was not renewed after 2009 and that the vehicle was actually being used for commercial purposes, it was absolved of liability, to the extent that though it was held liable to pay the compensation at the first instance, however, it was held

entitled to recover the entire amount from respondents No.1 and 2, jointly and severally.

11. Before this Court, learned counsel for the appellants submitted that firstly, the income of the deceased was assessed wrongly at Rs.4500/- per month, whereas it should have been accepted to be Rs.9000/- per month, even looking to the fact that he had 9 other mouths to feed.

Further, Mr. Arora submitted that the amount awarded towards loss of consortium and funeral expenses (Rs.5000/- each), even coupled with Rs.5000/- additionally awarded towards loss of estate, was highly inadequate, even as per the law settled on the issue.

Further, nothing having been awarded to the children of the deceased towards the loss of love and affection of their father, and nothing having been awarded towards the loss of future prospects of an increased income and towards transportation of the dead body, the compensation needs to be suitably enhanced.

12. Though earlier, counsel had been appearing for respondents No.1 and 3, non-appeared on the date of actual hearing, when the judgment was reserved in this case.

In any case, this Court obviously is to adjudicate upon the matter in the light of the settled law, under various heads of compensation, and accordingly the matter is being considered as such.

13. As regards the income of the deceased, no doubt learned counsel is correct to the extent that he may have been earning much more than Rs.4500/- per month, when he had nine members of his family to feed. However, it again cannot be lost sight of, that he also had an 18 year old son. In any case, with no other source of income proved, the Tribunal could only have gone by the approximate wages earned by a labourer in the month of August 2010, in Haryana.

A perusal of the chart of notified minimum wages in the State of Haryana, shows that w.e.f. 01.07.2010 the minimum monthly wage of an unskilled labourer was fixed Rs.4348.21. Consequently, I see no error in the learned Tribunal having assessed the monthly income to be an amount slightly higher than that, at Rs.4500/- per month.

14. Though the Tribunal went by the judgment of the hon'ble Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and Anr.**, (2009) 6 SCC 121, in deducting 1/5th of the income of the deceased towards his personal living expenses, the number of dependents being more than six, however, in a subsequent judgment in **New India Assurance Company Limited v. Gopali and others,** (2012 (3) RCR (Civil) 818), their Lordships held as follows:

> "In any case, where the family of the deceased comprised of 5 persons or more having an income of Rs.3000/- to Rs.5000/-, it is virtually impossible for him to spend more than 1/10th of the total income upon himself."

15. Consequently, in the present case, the deceased having 9 other dependents to support, though possibly with the help of his 18 year old son, he cannot be expected to have spent more than 1/10th of his aforesaid income upon himself. Thus, from the annual income of Rs.54,000/- (4500x12), a 1/10th deduction is made towards the personal living expenses of the deceased, coming to the loss of dependent income to the appellants to be Rs.48,600/- annually. The multiplier of 11 having been correctly applied by the Tribunal, for the age of the deceased, the total loss of dependent income to the appellants comes to Rs.5,34,600/-.

16. Other than the above, the first appellant, shown to be 45 years of age

at the time of death of her husband, would be entitled at Rs.1,00,000/- towards loss of consortium, and the eight children of the deceased would be entitled to a compensation of Rs.3,00,000/- in all, for the loss of love and affection of their father. Appellant No.2 being entitled to Rs.27,500/- thereof, appellants No.3, 4 and 5 being entitled to Rs.32,500/- each and appellants No. 6 to 9, all being less than 10 years of age at the time of death of their father, being entitled to the Rs.43,750/- each.

17. Towards the funeral expenses and last rites of the deceased, appellants No.1 and 2 would be entitled to Rs.12,500/- each, i.e. Rs.25,000/- in all, which is the accepted amount to be paid under that head, as per the ratio of the law settled by the hon'ble Supreme Court in **Rajesh and others vs. Rajbir Singh and others** (2013)(9) SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013)(7) SCC 476, constantly followed thereafter.

18. Though learned counsel for the appellants had also argued that no amount has been paid to the claimants, towards the loss of future prospects of income, however, as he was not in a permanent salaried job, the issue of payment of compensation for the loss of future prospects of an increased income is under consideration of the Apex Court in **National Insurance Company Limited Vs. Pushpa**, (2015) 9 SCC 166, having been referred to a larger Bench. Hence, this Court has been calculating the loss of future prospects of an increased income to the claimants in motor accident claim cases, where the deceased was not in permanent salaried employment and has, thereafter, been directing the insurance company concerned to deposit the compensation calculated under this head (on the parameters laid down in Rajeshs' case (supra), with the Motor Accident Claims Tribunal concerned, along with interest thereupon, with further directions

to the Tribunal to have the said amount deposited in a fixed deposit with a nationalized bank. Thereafter, depending upon the ratio of the judgment in Pushpas' case (supra), to be pronounced by their Lordships, disbursement would be made/not made to the claimants, in terms of what would be held by the Supreme Court.

Consequently, the calculation of loss of future prospects of an increased income to the appellants, is being calculated herein after but with disbursement of the calculated amount withheld presently.

19. Since the deceased was taken to be between the age group of 50 to 55 years, only 15% of his annual income is to be added to his existent income as on the date of his demise, as per the judgments in Rajeshs' case (supra) if approved by the larger Bench in Pushpas' case (supra). Therefore, the loss of future prospects of income to the deceased can at best be taken to be Rs.675/- per month, his monthly income having been assessed at Rs.4500/-. From that amount, Rs.67/- per month is to be deducted towards his personal living expenses, (as 10% of his income), thereby bringing the loss of dependent future increase in monthly income to the appellants to be Rs.608/-, or annually to be Rs.4860/-. To that amount again a multiplier of 11 is to be applied, thus coming to a total loss of Rs.80,206/- to the appellants, by way of loss of future prospects of an increased income of the deceased.

However, in the present case, the insurance company having been held not liable to pay the compensation, by the Tribunal, which finding has not been upset by this Court, there in any case, being no challenge to it, it would be unfair to direct the company to even deposit loss of future prospects of income, when possibly they eventually may not be held disbursable to the claimants, depending upon the ratio of the judgment, to be pronounced by the hon'ble

Supreme Court in Pushpas' case (supra).

Hence, in case the ratio of the judgment of the Supreme Court in ***Pushpas'*** case (supra) (larger Bench) is to the effect that the loss of future prospects of income are to be paid to even the claimants of such victims who were not in a permanent salaried job, then the appellants would further be entitled to receive compensation towards loss of future prospects of income, for an amount of Rs.80,206/-, plus 6% interest thereupon, running from the date of the filing of the claim petition till the date of disbursement of the compensation already enhanced by this Court.

Specifically, interest is not being to made to run in the case of loss of future prospects of income, till the date of realisation on a future date, for the reason that the date of judgment of the hon'ble Supreme Court in *Pushpas'* case (larger Bench), is obviously not known.

20. The compensation now awarded as per this judgment, to the appellants, is as follows:-

i) Towards loss of income (minus loss of future prospects)	Rs.5,34,600/-
ii) Towards loss of consortium to appellant No.1	Rs.1,00,000/-
iii) Towards loss of love and affection to appellants No.2 to 9	Rs.3,00,000/- (In the apportionment already given hereinabove to each of these appellants)
iv) Towards funeral expenses and last rites (in equal share to appellants No.1 and 2)	Rs.25,000/-
	Total Rs.9,59,600/-

Thus, the enhanced compensation immediately payable to the appellants, over and above the Rs.4,90,200/- awarded by the Tribunal, is Rs.4,69,400/-.

The aforesaid enhanced compensation shall carry an interest @ 7.5% per annum, running from the date of the filing of the claim petition, till the date of realization of the amount by the appellants.

21. In view of the fact that the driving licence of respondent No.2 was found to be not valid on the date of the accident, by the Tribunal, and further, because it was proved that though the "offending vehicle" was insured as a vehicle for private use but it was being used for commercial purposes, recovery rights of the enhanced amount of compensation would be available to respondent No.3, i.e. the insurance company that insured the said vehicle, from respondents No.1 and 2, jointly and severally.

The present appeal is allowed to the above extent, with no order as to costs.

July 13, 2016 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**