IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6055 of 2014
Date of Decision-20.10.2016

Deepak Lal @ Gudu and orthers ... Appellants
Versus
Karam Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

None for respondents No.1 and 2.

Mr. Rajbir Singh, Advocate for
Mr. Sanjiv Goyal, Advocate for respondent No.3.

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<u>RAJ MOHAN SINGH, J.</u>

[1]. Claimants have filed this appeal for enhancement of compensation granted by the Motor Accident Claims Tribunal, Chandigarh (for short 'Tribunal') in a claim petition under Section 166 of the Motor Vehicles Act (for short 'the Act').

[2]. Claimants are the children of the deceased Chaman Kalan who was aged 50 years at the time of accident and was working as a Peon in Agriculture Marketing Board, earning Rs.9000/- per month.

[3]. The accident took place on 01.04.2008 at about 5.30 p.m near TPT Light Point, Sector 26, Chandigarh, when the deceased was crossing the road along with her son. Offending vehicle came from Panchkula side in a rash and negligent manner and struck against her. As a result of impact, she fell down and her left arm was

crushed under tyre of the truck. She sustained grievous injuries and was removed to PGI, Chandigarh where she died due to the injuries suffered by her in the accident. The accident was witnessed by her son Rajesh. FIR was registered against the driver of the offending vehicle.

[4]. Tribunal held that accident and death of Chaman Kalan took place on account of rash and negligent driving of the offending truck. Under issue No.2, Tribunal held that the claimants are entitled to receive the compensation. Tribunal granted an award of Rs.9,68,536/- along with interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount. Respondents were held jointly and severely liable to pay the amount of compensation.

[5]. I have heard learned counsel for the parties

[6]. Learned counsel for the appellants contended that deceased Chaman Kalan was in Government Job and was serving as a Peon in Agricultural Board and her salary was Rs.10,722/- per month. Husband of the deceased pre-deceased her. Tribunal applied 1/3rd deduction towards self expenses and multiplier of 11.

[7]. Learned counsel vehemently submitted that ratio of ***Rajesh and others Vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170*** is a projection towards future prospects whereas the law laid down in ***K.R. Madhusudhan and others VS. Administrative Officer and another, 2011 Legal Eagle (SC) 165*** is applicable

where the deceased is above 50 years of age and his/her income is capable of being assessed on the basis of actual and real data and evidence. As per the criteria evolved in ***Smt. Sarla Verma Vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77***, the applicability of future prospects is a rule of thumb based on assumption in order to avoid uncertainties and inconsistencies. The rule is to be applied in those cases where there is no concrete evidence of definite rise in income in future prospects. If incontrovertible evidence comes on record that the deceased was bound to get a certain rise in income in future, then the same comes within exceptional circumstances and not within the purview of rule of thumb as laid down in ***Smt. Sarla Verma's case (supra).***

[8]. The question arises for consideration of this Court is whether evidence on record is sufficient to presume that there was every likelihood of rise in income of the deceased in future and therefore, the actual/real assessment of income of the deceased should be taken into consideration. As per statement of PW 2-Mohinder Pal, Clerk in Haryana State Agricultural Marketing Board who has deposed with reference to service record of the deceased that she was appointed on 06.05.1993 and was permanent employee of the Board. The date of birth of the deceased was 03.04.1953. The witness has produced extract of service record wherein her unrevised salary and revised salary in terms of Exs.P7 and P8 respectively were mentioned. The salary of deceased was revised w.e.f 01.01.2006 as per new revised pay commission. The

statement of PW 2 Mohinder Pal is definite in terms of future status of the deceased. Similarly situated employee namely Daya Shankar who was appointed along with the deceased was drawing salary of Rs.16,565/- per month. In order to apply the ratio of ***K.R. Madhusudhan and others case (supra),*** there should be definite evidence to show that she would have earned definite sum with the passage of time. Award of definite salary has to be given meaningful connotation for the purposes of considering future prospects. This should be free from any contingency factor. The ratio laid down in ***Smt. Sarla Verma's case (supra)*** has to be applied on the basis of rule of thumb in the absence of any definite and concrete evidence on record to show definite rise in income of the deceased due to future prospects. Uncertainties of life, service avenues/hierarchy/records and performance appraisal of the employees are the factors which have to be assessed for arriving at definite conclusion that the deceased would have drawn definite salary on account of future prospects.

[9]. The deceased and Daya Shankar (Peon) were appointees of the same day, but nothing has come on record in respect of service record of the deceased that she would have got the same status as that of Daya Shankar in terms of salary with the passage of time. There was a contingency factor with regard to definite rise in salary of an employee. Actual income has to be taken into consideration for assessing future prospects. A departure therefrom can be made only in rare and exceptional circumstances.

In view of evidence on record, there were no such exceptional circumstances existed in favour of the claimants. No evidence has come on record in order to show that future revision of pay of the deceased was on compulsory note. ***K.R. Madhusudhan and others case (supra)*** was on different proposition in which there was a concrete evidence of definite rise in income of the deceased.

[10]. Evidently, the income of the deceased as per Ex.P8 was Rs.10,722/- per month. Keeping in view the age of the deceased as per record i.e.55 years and in view of ratio laid down in ***Rajesh and others Vs. Rajbir Singh and others*** case (supra), 15% hike towards future prospects can be added to the aforesaid salary. In this way, the amount comes to Rs.12,330/- (10,722 X 15% =1608.3 +10,722=12330.3, rounded off Rs. 12,330/-) and after deducting 1/3rd towards self expenses, the amount comes to Rs.8220/- per month. Therefore, the annual dependency comes to Rs.98,640/- (8220 X 12). After applying multiplier of 11 as per ratio laid down in ***Smt. Sarla Verma's case (supra)***, the amount of compensation would come out to be Rs.10,85,040/- (98,640 X 11). An amount of Rs.1,00,000/- towards loss of estate, an amount of Rs.1,00,000/- towards love and affection and an amount of Rs.25,000/- towards funeral expenses are also required to be added. In this way total amount of compensation would come to Rs.13,10,040/-.

[11]. In view of above, the amount of compensation is worked out as under:-

Sr. No.	Heads	Amount awarded by the Tribunal	Amount assessed in appeal	Difference
1	Monthly income	7148/- (after deducting 1/3rd towards self expenses)	8220/- after giving hike of 15% and deducting 1/3rd towards self expenses)	
2	Annual dependency	85776/- (7148 X 12)	98640/- (8220 X 12)	
3	Compensation after multiplier	9,43,536/-	10,85,040/-	1,41,504/-
4	Loss of estate	Nil	1,00,000/-	1,00,000/-
5	Loss of love and affection	Nil	1,00,000/-	1,00,000/-
6	Funeral expenses	25,000/-	25,000/-	Nil
7	Total compensation	9,68,536/-	13,10,040/-	3,41,504/-

[12]. The enhanced amount i.e. 3,41,504/- shall carry interest @ 7.5 % per annum from the date of filing of claim petition till final realization of the amount.

[13]. With the aforesaid modification, the present appeal stands disposed of.

(RAJ MOHAN SINGH)
JUDGE

20.10.2016
Prince

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**