IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 940 of 2013 (O&M)
Date of Decision : 18.11.2016

Roma Chhabra @ Roma Rani and another ....Appellants

Versus

Ram Kumar and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Mamli, Advocate
for the appellants.

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

Surinder Gupta, J.

This is appeal by claimants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Yamunanagar (later referred to as 'the Tribunal') for death of Rakesh Kumar @ Dimple (later referred to as 'the deceased') in motor vehicle accident on 30.10.2011 with truck bearing registration no. HR-46-A-8781 (later referred to as 'the offending vehicle').

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

3. The Tribunal allowed compensation of ₹5,19,000/- to claimants, which was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Rakesh Kumar @ Dimple

(ii)	Age of the deceased at the time of accident	37 years
(iii)	Income of the deceased	₹4200 per month
(iv)	Annual dependency of claimants on income of the deceased @ ₹4200/- per month	(₹4200x12)= ₹50400 per annum
(v)	1/3rd of (iv) above deducted towards personal expenses	(₹50400-₹16800)= ₹33600
(vi)	Amount of dependency after applying multiplier of 15	(₹33600X15)= ₹504000
(vii)	Loss of consortium	₹5000
(viii)	Compensation towards transportation and last rites	₹10000
Total		**₹519000**

4. Learned counsel for appellants has argued that the deceased was a shop keeper and was carrying a *kiryana* business. The Tribunal has taken his income as ₹4200/- per month, which is on lower side. From the evidence on file, which include a diary maintained by the deceased and statements of witnesses, claimants have proved vocation of the deceased. Small shop keepers usually do not maintain regular account books and record of wages of helpers employed by them. There was no reason for the Tribunal to ignore the oral as well as documentary evidence regarding vocation of the deceased. Even by all moderate estimation, income of the deceased could be easily taken as ₹6000/- per month. He has further argued that claimants are also entitled to addition in income of the deceased towards future prospects, adequate compensation for loss of consortium for the wife, loss of love and affection care and guidance for minor child of the deceased and at least ₹25000/- towards funeral expenses.

5. Learned counsel for respondent no. 3-Insurance Company has argued that the Tribunal has rightly assessed income of the deceased keeping in view the price index prevailing at the relevant time, as such, there is no scope for enhancement in amount of compensation on this score. The matter relating to grant of addition in income of the deceased towards future prospects has been referred to a larger Bench of Apex Court in case of ***National Insurance Company Limited* vs. *Pushpa and others*, 2015 (9) SCC 166**, as such, no compensation on this score can be allowed.

6. Firstly, I take the point of income of the deceased. In FIR, which was recorded on the statement of Ram Kumar, immediately after the accident, it is mentioned that on the date of incident he had gone to *kiryana* shop of the deceased. At the time of recording FIR, there was no occasion for the complainant to make a false statement regarding vocation of the deceased. While appearing as PW-1, wife of the deceased has stated that her husband was running a *kiryana* store at Tikona *chowk*, Chhachhrauli road, Jagadhari from where he was having income of ₹30,000/- per month. He was also keeping a helper, namely, Ram Kumar, to whom he had been paying ₹5800/- per month as salary. Ram Kumar appeared as PW-2 and has stated that he was working as helper with the deceased and was getting ₹5800/- per month as salary. PW-3 Baljinder Kumar has also stated about the shop of Rakesh Kumar @ Dimple, where Ram Kumar was working as helper and he used to go to meet him. PW-5 Jangsher Singh has stated that the deceased was earning ₹25,000/- per month from his *kiryana* business. PW-6 Ram Dular has also stated that he was purchasing *kiryana* goods from shop of the deceased. PW-1 has also placed on record diary maintained by the deceased regarding his business transactions.

7. Keeping in view all the above facts, it is proved that the deceased was running a *kiryana* shop. The Tribunal discarded the oral testimony of witnesses regarding income of the deceased but this fact is proved that he was running a shop, as such, income of the deceased could not be taken as unskilled daily wager. The same, in the absence of any documentary evidence regarding income, is assessed as ₹6000/- per month.

8. On the point of grant of future prospects learned counsel for respondent no. 3 has argued that matter is pending before the Apex Court in a reference made in ***Pushpa's case (supra)***.

9. While making reference to larger Bench in ***Pushpa's case (supra)*** on issue of grant of addition in income towards future prospects and differing with the view taken in case of ***Sarla Verma and others vs. Delhi Transport Corporation and anr., (2009) 6 SCC 121,*** the Hon'ble Bench of Apex Court observed 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.*
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> *12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no 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*

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

> *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 judgment dated 15.05.2015 in case ***Munna Lal Jain and others*** ***vs.*** ***Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447,*** 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. It is a matter of common knowledge that stitching charges have increased manifold during last two decades due to increase in expenses of material/labour charges/margin of persons in this profession, with consequential increase in their income. The wages of daily wagers have also witnessed upward trend during this period. 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 claimant no. 2. 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 of 50% in income of the deceased towards future prospects as justified, as such, claimants are allowed 50% addition in income of the deceased towards future prospects.

14. Claimant no. 1 is wife of the deceased. For the loss of consortium, the Tribunal allowed compensation of ₹5000/-, which is enhanced to ₹1 lac in view of the observations of Apex Court in ***Rajesh's case (supra)***. Claimant no. 2, being minor child of the deceased, is also entitled to compensation of ₹1 lac towards loss of love and affection care and guidance. The amount of compensation allowed towards funeral expenses is also enhanced from ₹10,000/- to ₹25,000/-.

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

Sr. No.	***Heads***	***Calculation***
(i)	Age of the deceased	37 years
(ii)	Income of deceased	₹6000 per month
(iii)	50% of (ii) added towards future prospects	(₹6000+₹3000)= ₹9000 per month
(iv)	1/3rd of (iii) deducted as personal expenses of the deceased	(₹9000-₹3000)= ₹6000 per month

(v)	Amount of dependency after applying multiplier of 15.	(₹6000X12X15) = ₹1080000 per annum
(vi)	Loss of consortium for wife	₹100000
(vii)	Loss of love and affection for minor children	₹100000
(viii)	Funeral expenses	₹25000
Total		₹1305000

16. As a sequel of my discussion above, this appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Rakesh Kumar @ Dimple is enhanced from ₹5,19,000/- to ₹13,05,000/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Respondent no. 3-Insurance Company being insurer of the offending vehicle will deposit the enhanced amount of compensation in bank account of claimant no. 1 or pay the same to her through demand draft.

17. The share of claimant-appellant No. 2, who is minor, will be deposited in some nationalized bank as fixed deposit till the period he attains 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 he shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in his name after the date of his attaining majority. The above direction has been issued to save claimant from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after attaining the age of majority. Claimant no. 1-Roma Chhabra @ Roma Rani, being mother and natural guardian of minor claimant 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.

November 18, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*