

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

FAO No.819 of 2014

Date of decision : 21.11.2016

Smt. Gurdev Kaur and others

.....Appellants

Versus

Jharmal Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashwani Arora, Advocate for appellants.

Mr. P.K. Chugh, Advocate for respondent No.1.

Mr. M.B. Jain, Advocate for respondent No.2.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 22.11.2013 passed by the learned Motor Accident Claims Tribunal, SAS Nagar Mohali (hereinafter called the “Tribunal”), whereby the appellants have been awarded compensation to the tune of Rs.5,21,544/- as compensation on account of death of Mam Raj in the present motor vehicular accident which took place on 03.08.2011.

2. The present appeal has been preferred by the appellants-claimants for the enhancement of the amount of compensation.
3. I have heard learned counsel for the parties and gone through the record of the case meticulously.

4. Learned counsel for the appellants contended that the deceased has retired from P.G.I. Chandigarh and was getting the pension at the rate of Rs.10,527/- per month. He contended that the learned Tribunal has wrongly taken the income of the deceased to be Rs.5452/- per month after deducting the family pension, which is not permissible under law. He further contended that the learned Tribunal has awarded less amount towards loss of consortium. No amount has been awarded to the children of the deceased towards loss of love and affection. Thus, he contended that just amount of compensation has not been awarded by the learned Tribunal.

5. On the other hand, learned counsel for the respondents contended that even after the death of Mam Raj, appellant-claimant Gurdev Kaur is getting the family pension at the rate of Rs.5075/- per month. So, the pecuniary loss to the family was only Rs.5452/- per month. He further contended that the deceased was about 65 years of age but even then the learned Tribunal has wrongly awarded the future prospects to the extent of 30%. He further contended that the children of the deceased were major and were not dependent upon his income. So, 50% of the income of the deceased should have been deducted towards his personal and living expenses. Thus, he contended that the compensation awarded by the learned Tribunal is more than just and appropriate.

6. I have duly considered the aforesaid contentions.

7. The award passed by the learned Tribunal is against the settled proposition of law. It is the settled principle of law that the family

pension being received by the widow of the deceased cannot be deducted from the income of the deceased to compute the compensation. In case ***Arati Chakraborty and others Vs. Nephurai jamatia and another 2007 ACJ 1698***, the Hon'ble Gauhati High Court has laid down that while computing the compensation the family pension received by the widow of the deceased is not deductible. The Hon'ble Apex Court in case ***Lal Dei and others Vs. Himachal Road Transport 2008 ACJ 1107*** has also laid down as under:-

“It is contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accidents Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In the case of Mrs. Helen C. Rebello and others Vs. Maharashtra State Road Transport Corpn. And another reported in 1998(4) RCR (Civil) 177 : AIR 1998 page 3191 this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants.”

8. The Division Bench of Hon'ble Madhya Pradesh High Court has also in case ***Vimaladevi and others Vs. Ram Chandra and others 2010 ACJ 569*** has laid down that the family pension payable to the widow should not be deducted for determining the amount of compensation. Similar ratio

of law has been laid down in case ***Bhanwari Bai and others Vs. Union of India and another 2009 ACJ 1319.***

9. In view of the aforesaid ratio of law, the learned Tribunal has erroneously deducted the family pension. Whole of the income of the deceased *i.e.* the pension which he was drawing on the date of death *i.e.* Rs.10,527/- per month shall be taken into consideration. The annual income of the deceased comes to Rs.1,26,324/-. To make it a round figure, we can take it as Rs.1,26,300/-.

10. The learned Tribunal has added 30% of the income of the deceased towards the future prospects relying upon the case law ***Santosh Devi Vs. National Insurance Company Ltd. and others 2012(2) RCR (Civil) 882.*** In that case the deceased was 45 years of age. But in a later judgment of three Judges Bench of the Hon'ble Apex Court in case ***Rajesh Vs. Rajbir and others 2013(3) RCR 170,*** it has been laid down that there will normally be no addition to the income of the deceased towards future prospects after the age of 60. Admittedly in this case the deceased was 65 years of age. So, no addition to the income of the deceased is permissible under the law towards future prospects. So, the annual income of the deceased shall be taken to be Rs.1,26,300/-.

11. The learned Tribunal has deducted 1/4th of the income of the deceased towards his personal and living expenses. The claimants are the widow, two major sons and two married daughters of the deceased. Appellant-claimant Gurdev Kaur the widow of the deceased has

categorically stated in her testimony that she has four children out of whom, two daughters got married and are residing with their families. Two sons are residing with her.

12. There is no rebuttal to the statement of appellant-claimant Smt. Gurdev Kaur the widow of deceased Mam Raj that she and her two sons are living jointly. Meaning thereby both the sons were living jointly with their deceased father. No doubt both of them are major and are doing the private job. One of them is getting the salary at the rate of Rs.7000/- to Rs.8000/- per month and the other is getting salary at the rate of Rs.10,000/- to Rs.12,000/- per month. So, it is not a case where the sons of the deceased were drawing big salaries and they were not in need of any contribution to the family by their father. It is an admitted fact that even if a son is major and is earning, he does not stop looking to his father for financial help. The sons, even if they are major, do not lose the status of legal representatives, about which there is a reference in Section 166 (1)(c) of the Motor Vehicles Act, 1988 (for brevity the "Act"). Therefore, even the major sons and daughters are entitled to maintain the claim petition on the death of their father.

13. Death of Mam Raj has certainly resulted in loss to estate, so $\frac{1}{3}$ rd of the income of the deceased shall be deducted towards his personal and living expenses and $\frac{2}{3}$ rd of his income shall be taken to be loss to estate being his contribution to the family. Reference can be made to cases ***Manasvi Jain Vs. Delhi Transport Corporation 2014 (3) RCR (Civil) 313***

and *The New India Assurance Company Ltd. Vs. Kuldeep Singh and others* FAO No.5452 of 2012 decided on 02.08.2013. Similar ratio of law has also been laid down by this Court in cases *United India Insurance Company Limited Vs. Manjit Singh and others* FAO No.1276 of 2009 decided on 27.07.2010 and *Shri Ram General Insurance Company Ltd. Vs. Veena Chadha and others* FAO No.2879 of 2013 decided on 15.01.2014. Thus, the dependency/annual loss of contribution to the family comes to Rs.84,200/- ($1,26,300 \times 2 / 3$). In view of the age of the deceased the multiplier of 7 shall be applicable. Thus, the loss of dependency comes to Rs.5,89,400/-.

14. The learned Tribunal has awarded less amount towards loss of consortium to appellant-claimant Smt. Gurdev Kaur the widow of the deceased and towards loss of love and affection to appellants-claimants No.2 to 5. Appellant-claimant Smt. Gurdev Kaur the widow of the deceased shall be entitled to Rs.1,00,000/- towards loss of consortium. Appellants-claimants No.2 to 5 who are the major sons and daughters of the deceased also cannot be deprived of the compensation on account of loss of love and affection simply on the ground that they are major. It is a fact of common knowledge that in our society father enjoys the unique position. Even the major children have lot of love and respect for their father. They also seek guidance and advice of their father for the important matters in their life and family. Thus, appellants-claimants No.2 to 5 shall certainly be entitled to the compensation on account of loss of love and guidance of their father to the

extent of Rs.2,00,000/-. Learned Tribunal has rightly awarded a sum of Rs.25,000/- towards funeral expenses. In this manner, the total amount of compensation comes to Rs.9,14,400/-.

15. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to the appellants-claimants is enhanced to Rs.9,14,400/- from Rs.5,21,544/- as awarded by the Tribunal. The 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 petition till realisation. The liability to pay the enhanced amount of compensation and the apportionment amongst the claimants shall remain same as determined by the learned Tribunal in the main award.

21.11.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No