

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

Date of decision: July 12, 2016

(1) FAO No.942 of 2014 (O&M)

Dilber Singh

... Appellant

versus

Manpreet Singh @ Manni and others

... Respondents

(2) FAO No.944 of 2014

Sukhvir Kaur and others

... Appellants

versus

Manpreet Singh @ Manni and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Gurcharan Singh, Advocate,
for the appellants.

Mr.Abbhishek Jhamb, Advocate,
for Mr. Harash Aggarwal, Advocate,
for respondent No.3-Insurance Company.

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

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AMOL RATTAN SINGH, J.

These are two appeals filed, impugning two separate Awards of

the learned Motor Accident Claims Tribunal, Fatehgarh Sahib, both passed on 05.08.2013, in claim petitions No.81 and 82 of 2011, the said claim petitions arising out of a single accident that took place on 31.03.2011. Both the claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988.

In FAO No.942 of 2014, the appellant is the claimant who was injured in the aforesaid accident; and in FAO No.944 of 2014, the appellants are claimants seeking enhancement of compensation awarded by the Tribunal, for the death of Harwinder Singh, husband of appellant No.1, father of appellants No.2 & 3 and son of appellants N.4 and 5.

2. Since the appeals are against two separate Awards, they also need to be dealt with separately, even though they are listed together, except to the extent of noticing the facts regarding the accident and the finding of negligence against the first respondent in both the appeals, who was the driver of the vehicle against which the motorcycle on which the injured-claimant and the deceased were travelling, i.e. the driver of tractor bearing registration No. PB-41-A-9137. Those would be noticed while dealing with FAO No. 942 of 2014.

FAO No.942 of 2014

3. The facts, as taken from the Award of the learned Tribunal, are that on 31.03.2011, the appellant (in FAO No.942 of 2014), alongwith Harwinder Singh (since deceased, concerned with in FAO No.944 of 2014), was going on a motorcycle bearing registration No.PB-49-A-3490, being driven by Harwinder Singh, with the appellant-claimant (hereinafter to be referred as the appellant) as a pillion rider behind him.

When the motorcycle reached in the area of village Burj, at about 6:30 pm, then respondent No.1 is stated to have turned the tractor that he was driving to its right side, in a rash and negligent manner, thereby striking the motorcycle.

Both Harwinder Singh and the appellant fell down on the road and Harwinder Singh unfortunately died on the spot. The appellant is stated to have received injuries and was taken to the hospital and an FIR lodged the next day, i.e. on 01.04.2011, at the Police Station Khamanon.

The appellant in FAO No. 942 of 2014 then filed a claim petition before the Motor Accident Claims Tribunal, Fatehgarh Sahib, seeking compensation of Rs.54 lacs, alongwith 18% interest thereupon, per annum.

It was stated in the petition that he was working as a labourer, loading and unloading vehicles of Gill Tractor Trolley Services, Gandhi Nagar, Mandi Gobindgarh, and was also practicing dairy farming, thereby earning a total income of Rs.20,000/- per month.

3-A The appellants in FAO No. 944 of 2014 sought a compensation of Rs. 50,00,000/- for the death of Harwinder Singh.

4. Upon notice issued to them, the driver and owner of the aforesaid tractor, i.e. the present respondents No.1 and 2, appeared and filed a joint written statement (in FAO No. 942 of 2014) taking the usual preliminary objections with regard to maintainability, locus-standi etc. and further denying the claim with regard to the age and income of the appellant, as also his vocation.

It was further pleaded that a false case had been registered

against respondent No.1 with the accident itself being wholly denied, but that in any case, he was holding a valid driving licence on the date of the alleged accident.

5. The insurance company, i.e. respondent No.3 herein, with whom the tractor was insured, filed a separate written statement also taking the usual preliminary objections, including one that respondent No.1 did not have an effective driving licence, the tractor being used against the terms of the insurance policy etc.

On merits, the company also denied the factum of the accident and the other pleas taken in the claim petition.

6. The following issues were framed thereafter by the learned Tribunal:-

- “1. Whether Dilber Singh son of Sher Singh suffered injuries in accident on 31.03.2011 at about 6.30 PM in the area of village Burj, Tehsil Khamanon due to rash and negligent driving of driver of tractor No.PB-41-A-9137 driven by respondent No.1? OPA
2. Whether the driver of tractor No.PB-41-A-9137 was not holding valid and effective driving license at the time of accident and the same was being plied without any valid route permit etc.? OPR
3. Whether the claim petition is bad for non-joinder of necessary parties due to non impleading of owner, driver and insurer of tractor No.PB-41-A-9137? OPR
4. Whether the claim petition is time barred and not maintainable in the present form? OPR
5. What amount of compensation the compensation the claimants are entitled to and from whom? OPA
6. Relief.”

7. The appellant-claimant himself stepped into the witness box as CW1 and further examined one Mohinder Singh as CW2 and Dr.Parminder Singh as CW3.

The respondents did not lead any oral evidence but tendered a cover note of the insurance policy, a certified copy of the driving licence of respondent No.1 and a certified copy of the registration certificate of the tractor, by way of documentary evidence.

The insurance company also tendered a verification report with respect to the registration certificate of the tractor.

8. On appraising the evidence, the learned Tribunal found the negligence of respondent No.1 in driving the tractor, thereby leading to the accident, to have been proved, which finding is not under challenge in any appeal shown to have been filed by the respondents.

Adequacy/inadequacy of the compensation awarded to the claimants (the two sets of claimants in these two appeals) is now to be looked at separately by this Court.

9. As regards the compensation payable to the appellant in FAO No. 942 of 2014, on the basis of the deposition of Dr.Parminder Singh, Orthopedician, in the Chawla Hospital and Nursing Home, Mohali, who also tendered some documentary evidence, the Tribunal found that the appellant had suffered a compound fracture of the left femur and had been operated upon, on 02.04.2011. He was thereafter discharged on 08.04.2011 in a satisfactory condition, with the total expenditure on his treatment being Rs.45,000/-.The treatment record and a receipt of payment of Rs.45,000/- was also proved by the doctor, whose testimony was found to be not shaken

during cross-examination.

10. The contention of the appellant that he had spent Rs.10,00,000/- on his treatment was found to be wholly false, with no evidence led to that effect and consequently, as regards actual expenses incurred on medical treatment, he was held entitled to Rs.45,000/- as compensation under that head.

11. Seeing that he had suffered a compound fracture on the left femur and had remained admitted in the hospital for seven days, he was awarded compensation of Rs.10,000/- under the head of pain and suffering. On account of not having been able to earn any money for two to three months due to his fracture and recovery thereafter, he was held entitled to compensation of Rs.5000/-, by way of loss of income.

Another Rs.3000/- was awarded on account of transportation expenses and Rs.5000/- for a special diet.

Thus, a total sum of Rs.68,000/- was awarded to the appellant as compensation, on account of the fracture that he had suffered because of the accident, and the pain and suffering that he had gone through, as also for the expenses that he would have incurred in all respects, to get the fracture treated and to recover from such treatment.

12. The driving licence of respondent No.1 having been found to be valid and no part of the policy having been found to be violated, all three respondents were held liable jointly and severally to pay the compensation, with respondent No.3 held bound to indemnify the insured, i.e. respondent No.2.

Interest @ 7.5% per annum was also awarded on the

compensation amount, running from the date of filing the claim petition till realization of the payment.

13. Mr. Gurcharan Singh, learned counsel for the appellant, argued before this Court that firstly, the learned Tribunal had wholly erred in assessing the loss of income to the appellant to be only Rs.5000/-, whereas actually he remained out of work for three to four months at least on account of the fracture, and even if no other income was proved then even as per the prevailing wages for an unskilled labourer in the year 2011, at least Rs.4000/- per month should have been awarded as loss of income to the appellant, thereby making a total loss of Rs.16,000/- to Rs.20,000/- to be paid as compensation under that head.

He further submitted that for all the pain and suffering, the simple trauma of the accident, the operation, the recovery period, the psychological effect of not being able to work, Rs.10,000/- was wholly inadequate compensation.

Still further, learned counsel submitted that even for medical treatment, diet and transportation etc., higher compensation should have been awarded.

14. On the other hand, Mr. Abhishek Jhamb, learned counsel appearing for the 3rd respondent, i.e. the insurance company, submitted that with no proof of income, the amount of Rs.5000/- awarded by the Tribunal, taking the appellant to have been out of work for two to three months, was fully adequate compensation under that head and in the absence of any bills etc. for more than Rs.45,000/-, obviously no further compensation could have been awarded under that head.

As regards transportation charges and money for extra diet, learned counsels' submissions was that the amount of Rs.3000/- and Rs.5000/- respectively, had been correctly assessed by the Tribunal, though in fact, even such sums were of the higher side.

According to him, even Rs.10,000/- for pain and suffering was adequate compensation.

15. Having considered the aforesaid arguments as also the Award of the learned Tribunal, I agree with the learned counsel for the appellant to the extent that as regards the pain and suffering undergone by the appellant, Rs.10,000/- is wholly inadequate compensation.

He met with the accident on 31.03.2011 and in addition to the trauma of the accident itself, he further had to be taken and admitted to hospital where he remained for the period of one week, even having undergone an operation for a compound fracture on his femur and thereafter obviously remained out of work till the fracture healed completely and he was healthy enough to walk around and work after that.

Hence, for all the above trauma, pain and suffering that the appellant must have gone through, he is awarded Rs.50,000/- as compensation.

16. Coming to the issue of loss of income, learned counsel for the appellant is correct in stating that even as per the minimum wages notified by the State of Punjab, in the month of March 2011, such minimum wages for an unskilled labourer were Rs.3842/- per month. Hence, even if it is taken that the fracture, after the operation, took about 2 to 3 months to completely heal and thereafter 15 to 20 days were spent by the appellant in

simply getting used to walking around, thus, he obviously remained out of work for about 3 to 4 months and as such, compensation for actual loss of income should be so assessed.

Thus, taking it that he was earning about Rs.4000/- per month and remained out of work for about 3 and half months on account of the accident, it would entitle him to a compensation, for actual loss of income, of Rs.14,000/-. Consequently, he being a labourer, is awarded Rs.14,000/- under that head.

17. As regards the compensation for transportation and for extra nourishment, in the opinion of this Court, the Tribunal did not err in awarding Rs.3000/- and Rs.5000/- respectively under these two heads and as such, the said compensation is left intact.

Similarly, with the total amount spent on treatment, having been proved to be Rs.45,000/- by way of documentary evidence, I see no reason to interfere with that finding and Award of the Tribunal, which is also left intact.

18. In view of what has been held hereinabove, the appellant is now held entitled to compensation as follows:-

i)	For pain and suffering	Rs.50,000/-
ii)	Towards amount spent on treatment	Rs.45,000/-
iii)	For loss of actual income	Rs.14,000/-
iv)	On account of transportation expenses	Rs.3000/-
v)	On account of extra nourishment	Rs.5000/-
Total		Rs.1,17,000/-

Hence, the total compensation awarded now by this judgment is Rs.49,000/- over and above the amount awarded by the Tribunal.

The enhanced compensation would carry interest @ 7% per annum, running from the date of filing of the claim petition, till its realization to the appellant and would be payable jointly and severally by the three respondents herein, with respondent No.3 held liable to indemnify the 2nd respondent, i.e. the owner of the vehicle and therefore, the compensation to be actually paid is foisted upon respondent No.3.

The appeal is accordingly partly allowed, with no order as to costs.

FAO No.944 of 2014

19. In this appeal, the legal heirs, i.e. the widow, children and parents of deceased Harwinder Singh are seeking enhancement of the compensation amount of Rs.7,88,000/- awarded by the Tribunal, alongwith 7.5% interest upon that sum, per annum.

It had been claimed by the appellants-claimants (hereinafter to be referred to as the appellants), that Harwinder Singh was a driver by profession, driving the tractor trolley of M/s Gill Tractor Trolley Services, Mandi Gobindgarh, drawing a salary of Rs.6000/- per month and was also doing labour work of loading/unloading vehicles and earning Rs.500/- per day for the said labour. Thus, his total income was stated to be Rs.18,500/- per month and compensation of Rs.50,00,000/- was claimed, alongwith 18% interest per annum thereupon.

20. In the replies filed by the respondents, to the claim petition out of which this appeal arises, the same objections were raised as were raised

in the other claim petition, which have been noticed earlier. On the issue of compensation also, similar objections were taken.

21. On the basis of the salary certificate of deceased Harwinder Singh, the Tribunal held his income to be Rs.6000/- per month, with there being no proof of his having earned any additional income by doing labour work of loading and unloading of vehicles.

The deceased was stated to be 31 years of age, which was accepted by the Tribunal on the basis of the post mortem report.

The Tribunal applied a 1/3rd cut upon the aforesaid income of Rs.6000/- per month and thereby held the loss of dependent income of the appellants herein, to be Rs.4000/- per month, or Rs.48,000/- per annum. A multiplier of 16 was applied, thereby awarding a total compensation under the head of loss of income to be Rs.7,68,000/-.

Rs.5000/- was awarded towards the funeral expenses, another Rs.5000/- was awarded for loss of love and affection to appellant No.1, i.e. the widow of the deceased and Rs.10,000/- was awarded to her by way of loss of consortium.

Thus, a total amount of Rs.7,88,000/- was awarded.

22. Mr. Gurcharan Singh, learned counsel for the appellants, submitted that since there were six claimants before the Tribunal, deduction towards the personal expenses of the deceased could not have been deducted 1/3rd, in terms of the ratio of the judgment of the Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121, and should have been 1/4th.

Further, Rs. 1,00,000/- is to be awarded, as per learned counsel,

to appellant No.1 towards loss of consortium and at least Rs.1,00,000/- each to the minor children of the deceased (appellants No.2 and 3) who were 12 and 7 years old respectively at the time of filing of the claim petition, about seven months after the accident.

Similarly, learned counsel submitted that adequate amount of compensation needs to be awarded to the parents of the deceased, i.e. appellants No.4 and 5, for the loss of their son aged 31 years and still further, funeral expenses to the extent of at least Rs.25,000/- are to be awarded, in terms of the ratio of the judgment of the 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.

Further, relying upon the aforesaid judgments, as also the judgment in *Sarla Verma's* case (supra), Mr. Gurcharan Singh submitted that loss of future prospects of income also are to be awarded to the appellants as the deceased was in a salaried employment.

23. Mr. Abhishek Jhamb, learned counsel appearing for the respondent insurance company (respondent No.3), on the other hand submitted, that though he may not have anything to say with regard to deduction of 1/4th of the income of the deceased towards his personal expenses, in terms of the ratio in *Sarla Verma's case*, as also on the issue of funeral expenses, and loss of consortium, however, as regards the loss of love and affection to the children and parents of the deceased, the amounts claimed by the learned counsel for the appellants, are far on the higher side.

Further, Mr. Jhamb submitted that the employment of

Harwinder Singh not being in a permanent job, it cannot be said that the appellants are covered by the ratio of the judgment in *Sarla Verma's* case for compensation to be awarded for loss of future prospects of increased income. He further submitted that in **National Insurance Co. Ltd. v. Pushpa, (2015) 9 SCC 166**, the issue of payment of loss of future prospects of income to those who were not in permanent salaried employment, has been referred to a larger Bench of the Supreme Court and as such, the appellants are not entitled to that compensation at all.

24. Having considered the aforesaid arguments, as also the Award of the Tribunal, whereas I agree with the learned counsel for the appellant that the personal living expenses of the deceased to the extent only of 1/4th of his assessed income should have been deducted, and higher amounts should also have been awarded towards loss of consortium, loss of love and affection and funeral expenses and last rites of the deceased, I am in agreement with learned counsel for the respondents, to the extent that no compensation with regard to loss of future prospects of an increased income, can be disbursed to the appellants, till the final decision of the hon'ble Supreme Court in *Pushpas'* case (supra).

25. Accordingly, accepting the income of the deceased, as a driver of a tractor, to be Rs.6000/- as assessed by the learned Tribunal, that in any case being higher than the minimum wages prescribed for a skilled worker (lower) by the Punjab Government during the relevant period, a 1/4th deduction is applied to the aforesaid income, thereby resulting in a monthly loss of dependent income to the appellants of Rs.4500/- per month, or Rs.54,000/- per annum.

To the aforesaid sum a multiplier of 16 is to be applied, as was

correctly applied by the Tribunal, thus amounting to a loss of income of Rs.8,64,000/- to the appellants.

26. It may be stated here that though appellant No.4 is the father of the deceased and otherwise in terms of the judgment of the Supreme Court in Sarla Vermas' case (supra), a father cannot be held to be dependent upon his son, unless specifically proved to the contrary, in the present case, in the opinion of this Court, it would stand proved *per se*, because the age of appellant No.4 is shown to be 65 years at the time of the filing of the claim petition and he being the father of a labourer, was not shown to be a person who was in receipt of any pension etc. from any service career of his own and as such, at that age, in any case, he would be dependent upon his son. The mother of the deceased, i.e. appellant No.5, is shown to be 60 years old, thereby also making the age of 65 years of appellant No.4 to be acceptable as his correct age.

Hence, as regards the aforesaid compensation of Rs.8,64,000/-, towards loss of dependent income, all the appellants are held entitled to the same, subject of course to apportionment of the same, which would be dealt with further ahead.

27. As per the law settled in *Rajesh v. Rajbir Singh and Vimal Kanwars'* cases (supra), the widow of the deceased (appellant No.1) is entitled to Rs.1,00,000/- towards loss of consortium, whereas she has been awarded a total sum of Rs.15,000/- under two different heads (of loss of love and affection and loss of consortium). Hence, she is entitled to Rs.85,000/- more than what was awarded by the Tribunal and is accordingly awarded the same.

As regards loss of love and affection, in the aforesaid two

judgments of *Rajesh v. Rajbir Singh* and *Vimal Kanwars'* cases, the hon'ble Supreme Court, in the first case had awarded Rs.1,00,000/- as total compensation to three children, whereas Rs.2,00,000/- was awarded to the minor daughter of the deceased in *Vimal Kanwars'* case.

Consequently, this Court has been awarding between Rs.1,00,000/- to Rs.2,00,000/- to the minor children of the deceased, dependent upon their age and, of course, the total number of children. In the present case, since appellants No.2 and 3 were less than 12 and 7 years of age at the time of death of their father (i.e. about 7 months before the claim petitions were filed) and have lost his love and affection, care and guidance at that young age, they are both held entitled to compensation of Rs.1,00,000/- each, which is consequently awarded to them.

As regards the parents of the deceased (appellants No.4 and 5), they are awarded a sum of Rs.50,000/- each for the loss of love and affection of their son, as has been conventionally awarded in such cases to parents of adult children.

In addition, appellants No.1 and 4 awarded Rs.12,500/- each towards the funeral expenses of the deceased, i.e. a total sum of Rs.25,000/-, as per the ratio of the judgments in *Rajesh v. Rajbir and Vimal Kanwars'* cases (supra).

28. Hence, the total compensation now awarded by this judgment, to the appellants, is as follows:-

i)	Towards loss of income	Rs.8,64,000/-
ii)	Towards loss of consortium to appellant No.1.	Rs.1,00,000/-
iii)	Towards loss of love and affection of their father to appellants No.2 and 3	Rs.1,00,000/- each = Rs.2,00,000/-
iv)	Towards loss of love and affection	Rs.50,000/- each

	of their son to appellants No.4 and 5	=Rs.1,00,000/-
iv)	Towards expenses for funeral and last rites (to appellants No.1 and 4)	Rs.25,000/-
	Total:	Rs.12,89,000/-

The aforesaid sum is Rs.5,01,000/- above what was awarded by the Tribunal, i.e. above Rs.7,88,000/-. The aforesaid enhanced amount of compensation would carry interest @ 7% per annum, running from the date of the filing of the claim petition, till the date of realization thereof.

29. Of the aforesaid amount, the children of the deceased, i.e. appellants No.2 and 3 would be paid Rs.1,00,000/- each and appellant No.4 would be paid Rs.80,500/-. Appellant No.5 would be paid Rs.68,000/- and appellant No.1, i.e. the widow of the deceased, would be paid Rs.1,52,500/-. Naturally, the aforesaid amounts would each carry the interest already awarded on the whole amount, i.e. 7% per annum, running from the date of the filing of the claim petition, till the date of realization thereof, to each claimant.

30. Coming last to the issue of payment of future prospects of income, as claimed by the learned counsel for the appellants.

It is seen that though deceased Harwinder Singhs' income was held to be Rs.6000/- per month on the basis of a salary certificate produced, and it was stated that he was working as a tractor driver with a concern that he was plying the tractor for, for commercial purposes, however, the said concern not having been shown to be either a private or a public limited company, it cannot be concluded that the employment of the deceased was in any kind of permanent capacity.

Hence, the contention of learned counsel for the respondent is correct in that regard, but this Court is of the opinion and that it is necessary to at least determine the loss of future prospects of income to the appellants, so as to put a finality on these proceedings. Accordingly, as has been done in other such like cases, where the deceased was not found to be in a permanent salaried employment, the loss of future prospects of income are being calculated in terms of the ratio of law laid down in *Rajeshs'* case (supra), but the calculated sum would be disbursed to the appellants only if the ratio of the judgment of the Supreme Court (larger Bench) in *Pushpas'* case (supra), holds to the effect that the loss of future prospects of income are payable even to the claimants in motor vehicle accident claims cases where the deceased was not in a permanent salaried employment.

31. Hence, as the deceased was earning Rs.6000/- per month, 50% of that amount, i.e. Rs.3000/-, is to be taken as the base for calculating the loss of future prospects of income to the appellants, in terms of the judgment in *Sarla Verma's'* case and *Rajbirs'* case the deceased being less than 40 years of age.

A 1/4th deduction is to be made from the aforesaid sum of Rs.3000/-, towards the personal living expenses of the deceased, thereby making the monthly dependency of the appellants, to the loss of future prospects of increased income of the deceased, to be Rs.2250/-.

Therefore, the annual loss of future prospects of income to the appellants, works out to be Rs.27,000/-, to which a multiplier of 16 is to be again applied, coming to a sum of Rs.4,32,000/- that may become payable to the appellants, by way of total loss of future prospects of income, if the

judgment of the Supreme Court holds that such compensation is payable to claimants in such like cases.

Hence, respondent No.3, i.e. the insurance company, shall deposit the aforesaid sum, i.e. Rs.4,32,000/-, with the Tribunal, alongwith interest @ 6% per annum, running from the date of the filing of the claim petition, till the date of such deposit.

The Tribunal shall further have the aforesaid sum deposited in a fixed deposit carrying maximum interest, with a nationalized bank.

If the ratio of the judgment of the Supreme Court in *Pushpas'* case (supra) comes in favour of the claimants in such like cases, the aforesaid sum, alongwith interest that would have accrued in the fixed deposit, would be disbursed to the appellants in the same manner as compensation in motor vehicle accident claims cases is disbursed to the claimants in such cases, with no further reference to this Court.

If, on the other hand, the hon'ble Supreme Court holds that the loss of future prospects of income are not payable to claimants in such like cases, then the insurance company (respondent No.3), would be entitled to have the deposited sum refunded to itself upon an application made to the Tribunal, alongwith the interest that has accrued upon the amount in the fixed deposit.

32. This appeal is accordingly also partly allowed, with no order as to costs.

July 12, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE