

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

FAO No. 4521 of 2002

DATE OF DECISION : 25.10.2017

Shakuntla Kumari Sahni and another

.... APPELLANTS

Versus

Rishi Kapur and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Ekta Thakur, Advocate,
for the appellants.

Mr. Rajnish Malhotra and Ms. Monika Jhangra, Advocates,
for respondent No.3 - Insurance Company.

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AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 17.07.2002 passed by the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal').

The file of this appeal was burnt and from the salvaged record of the partially burnt case, the same was reconstructed subject to all just exceptions and further verification.

On 08.04.2000, Om Parkash Sahni met with a motor vehicle accident. He was struck by a scooter bearing registration No. CH-01-7867. As a result of the accident, he suffered injuries which proved fatal and he died on 22.04.2000.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the widow and major son of the deceased.

The Tribunal, after considering the evidence and witnesses, awarded a sum of ₹ 1,55,000/- to the claimants along with interest at the rate of 9% per annum.

The present appeal has been filed by the claimants for enhancement of the compensation.

I have heard learned counsel for the parties and perused the paper-book.

The facts of the case have not been disputed by either of the party.

Learned counsel for the appellants has not disputed the loss of dependency assessed by the Tribunal. The only grievance of the appellants is that the deceased was 64 years of age at the time of the accident and the Tribunal has wrongly applied the multiplier of one. Learned counsel further contends that no amount has been awarded under the conventional heads.

Learned counsel for respondent No.3 – Insurance Company has opposed any enhancement and argued that sufficient amount has already been awarded by the Tribunal. He further contends that income of the deceased is not being disputed by the claimants, in such circumstances, the amount awarded is justified.

The contention raised by learned counsel for the appellants regarding applying of multiplier of one deserves acceptance. The contention is supported by a decision of the Hon'ble Apex Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121.*** As per the table given in the aforesaid decision, in the case where the deceased was 61 to 65 years of age at the time of the accident, multiplier of seven should be applied. Hence, applying the multiplier of seven, the loss of dependency is re-calculated taking into account the income as assessed by the Tribunal, which comes to $5000 \times 12 \times 7 = ₹ 4,20,000/-$.

The contention with regard to the awarding of compensation under the conventional heads also deserves acceptance. The deceased was survived by a widow and a major son. The Tribunal should have taken into consideration the loss of companion as well as loss of love and affection of the major son.

The Hon'ble Apex Court in ***Rajesh and others Versus Rajbir Singh and others, 2013 (9) SCC 54***, has held as under:

“The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads; loss of consortium to the

spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of ₹ 2500/- to ₹ 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased."

Further, following the decision in **Rajesh's case** (supra), Hon'ble the Apex Court in ***Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767***, held as under:

*"17. Further, the High Court has erred in awarding only ₹ 5,000/- each towards loss of estate, funeral expenses and loss of consortium. We award ₹ 1,00,000/- towards loss of estate according to the principles laid down in the case of **Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation, 2014 (2) R.C.R.(Civil) 876; 2014 (3) Recent Apex Judgments (R.A.J.) 112; 2014 (5) SCALE 479, ₹ 25,000/- towards funeral expenses and ₹ 1,00,000/- towards loss of consortium as per the principles laid down by this Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors., 2013 (3) R.C.R. (Civil) 170; 2013 (3) Recent Apex Judgments (R.A.J.) 659; (2013) 9 SCC 54.*****

*18. Further, we award ₹ 1,00,000/- each to the appellant-children towards loss of love and affection due to the loss of their father(deceased) as per the decision of this Court in the case of **Juju Kuruvila & Ors. vs. Kunjamma Mohan & Ors., 2013 (3) R.C.R. (Civil) 817 : 2013(4)***

*Recent Apex Judgments (R.A.J.) 364 : (2013)9 SCC 166. Further, a sum of ₹ 50,000/- is awarded to each of the appellant-parents towards loss of love and affection of their deceased son as per the principles laid down by this Court in the case of **M Mansoor & Anr. vs. United India Insurance Co.Ltd.,** 2013(4) R.C.R.(Civil) 729 : 2013(5) Recent Apex Judgments (R.A.J.) 516 : 2013 (12) SCALE 324.”*

A perusal of the above decision shows that Hon'ble the Apex Court has enhanced the compensation awarded by the High Court under the Heads of 'loss of estate', 'funeral expenses' and 'loss of consortium'.

Further, this Court in **Smt. Gurdev Kaur and others Versus Jharmal Singh and another,** 2017 (3) Punjab Law Reporter 9, has held as under :

“.....Appellants-claimant 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 ₹ 2,00,000/-.....”

This Court in **Munshi Ram and another Versus Balkar Singh and others**, 2016 (2) PLR 526, has held as under:

“4. As regards the quantum in FAO 598 of 2014, the deceased was 51 years of age and a housewife. The claimants were the husband and major son and major daughter. The Tribunal took the value of her services at Rs.2500/-. The counsel argues that there must be prospects of increase. Taking the value of services at Rs.4500/- and allowing for a multiplier of 11 suitable to the age of deceased, I will provide for the lakh of rupees for loss of consortium to the husband and make a further provision of Rs.25000/- to each major son and daughter for loss of love and affection.”

In view of the decisions referred above, the major children are also entitled for loss of love and affection.

Keeping in view the above referred decisions and the facts of the case, the sums under the various heads are awarded as per the table given below :

Head	Awarded by the Tribunal	Awarded now by this court
Loss of dependency	₹ 60,000/-	₹ 4,20,000/-
Medical expenses	₹ 95,000/-	₹ 95,000/-
Loss of consortium	-	₹ 50,000/-
Funeral expenses	-	₹ 20,000/-
Loss of estate	-	₹ 25,000/-
Loss of love and affection	-	₹ 25,000/-
Total	₹ 1,55,000/-	₹ 6,35,000/-

In view of the above, the award dated 17.07.2002 is modified to the extent that the amount of ₹ 1,55,000/- awarded by the Tribunal is enhanced to ₹ 6,35,000/-. The appellants shall be entitled to the enhanced amount of compensation along with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation of the amount.

Appeal is partly allowed, in the aforesaid terms.

October 25, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes