

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of decision : 16 .06.2017

1.

FAO-478-1991

Sahab Singh

... Appellant

Versus

Parkash and others

... Respondents

2.

FAO-1164-1991

Sahab Singh

... Appellant

Versus

Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Harsh Aggarwal, Advocate
for the appellant.

Mr. Pardeep Kumar, Advocate
for respondent no.3-insurance company.

AMOL RATTAN SINGH, J.(ORAL)

1. These two appeals challenge the Award of the learned Motor Accident Claims Tribunal, Gurgaon, dated 01.10.1990 by which the two claim petitions filed by the single petitioner, i.e. Sahab Singh, were decided

2. The claim petitions were instituted on account of motor accident that took place on 10.05.1989 when the present appellant was going from Gurgaon towards Delhi on scooter no.DHI-7636, with his wife and two year old son sitting pillion behind him.

As per the claim petition, when they reached in front of the gate of Jawala Textile Mills, a four wheeler vehicle bearing registration no.HMG-1607 came from the opposite direction, allegedly driven in a rash and negligent manner by respondent no.1, i.e. Parkash son of Ram Kala. The four wheeler is stated to have dashed against the appellants' scooter due to which the three riders on the scooter fell down. Unfortunately, the two year old son of the petitioner (Yogesh) died on the spot whereas his wife, Rajeshwari, succumbed to her injuries on the next day in the Safdarjang Hospital, New Delhi.

The appellant also suffered injuries by way of three fractures of his left leg and while he was initially admitted to the Civil Hospital, Gurgaon, the next date he too was shifted to the Safdarjang Hospital, where he is stated to have remained admitted till 04.07.1989, i.e. for a period of almost two months.

He claimed to have spent Rs.20,000/- on his treatment but sought a compensation of Rs.3 lacs, in respect of the loss of income, loss of earning capacity, treatment expenses, pain and suffering, expenses of an attendant, special diet etc.

Thus Claim Petition no.70 was filed seeking a compensation of Rs.3 lacs on account of the injuries suffered by the present appellant himself.

3. Claim petition no.71 of 1989 was instituted by him seeking compensation for the death of his wife and minor son, to the extent of Rs.5 lacs for the death of his wife Rajeshwari and Rs.2 lacs for the death of his son Yogesh.

The learned Tribunal having awarded Rs.30,000/- as compensation for the injuries suffered by the petitioner and Rs.15,000/- as compensation for the death of his son, and Rs.40,000/- for the death of his wife, the present two appeals have come to be filed, with FAO no.478 of 1991 having been filed seeking enhancement of compensation awarded in claim petition no.70 of 1989 and FAO no.1164 of 1991 having been filed for seeking enhancement of the compensation awarded in claim petition no.71 of 1989.

4. Coming to the claim petitions filed before the learned Tribunal, the appellant claimed that he was working as a washerman, washing and ironing the clothes of hostel students of Kiran Memorial Public School, Mehrauli, New Delhi, drawing Rs.7000/- / Rs.7500/- per month from the school, out of which he paid five servants. He also claimed that he was earning Rs.2000/- per month by washing and ironing the clothes of school teachers.

Thus the averment in the claim petition was that the appellant was earning Rs.2000/- to 3000/- per month.

As regards his late wife, he stated that she was 26 years old, earning Rs.900/- per month by ironing clothes and thus being self employed.

5. The two petitions having been consolidated by the learned Tribunal, the driver and owner of the vehicle, i.e. respondents no.1 & 2 filed

a joint written statement denying that the accident had been caused by respondent no.1, with the insurance company, i.e. respondent no.3, with whom four wheeler vehicle was insured, denying the accident altogether and further stating that the quantum of compensation was excessive.

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

- “1. Whether petitioner Sahab Singh suffered injuries and his wife Smt. Rajeshwari and minor son Yogesh died in accident caused by rash and negligent driving of tempo no.HNG-1607 by Parkash, respondent no.1?OPP*
- 2. Whether the petitioner is entitled to compensation if so, how much and from whom?OPP*
- 3. Whether the petitioner has no locus standi to file the petitions?OPR*
- 4. Relief.”*

7. While testifying as PW1, the appellant first described the manner of the accident, which was accepted by the learned Tribunal, as the said evidence was not rebutted by respondent no.1 stepping into the witness box. The post mortem reports in respect of the two deceased also having been led by way of evidence and an FIR registered against respondent no.1 also so tendered, the first issue, pertaining to the negligence in driving, was decided by the Tribunal against the respondents and in favour of the appellant.

8. No appeal against that or any other finding of the Award is shown to have been filed by the respondents herein.

9. As regards the compensation to be paid for the injuries suffered by the appellant, it was found by the learned Tribunal in terms of the

PW3, that three fractures were suffered in the left leg by the appellant and eventually there was also a permanent disability by way of a shortening of the left lower limb by 1½” and a moderate restriction of movement in his left knee.

As per the doctor, the total permanent disability was to the extent of 30%.

However, while accepting the injuries and the shortening of the limb, the learned Tribunal held that the disability caused by the shortening of the leg could be 15%, but moderate restriction of the movement in one knee could not amount to the remaining 15% of the permanent disability.

In that context it has also held that the claimant can still easily iron clothes and collect and distribute them, and he admittedly having servants to assist him in washing and ironing, there was no permanent loss of income, which was also assessed from the testimony of PW4, Ram Lal, who also testified that the appellant-claimant had employed 5-6 persons including his wife, to each of whom he paid Rs.1000 to Rs.1200/- per month, with this witness also eventually not denying that the appellant continued to earn his income as such.

Thus, with it being admitted that he was employed 5-6 persons and paying them Rs.1000 to Rs.1200/- per month each, out of his earnings of Rs.7500/- per month, it was held that his own income could not be more than Rs.1000/- to Rs.1200/- per month, which was in fact corroborated by the certificate given by the aforesaid school, tendered as Ex.P16 by the appellant-claimant.

10. Hence the appellant having remaining admitted in hospital for about 2 months, with it expected that he would not have been able to

immediately go back to work thereafter, seeing also the injuries suffered by him, further seeing the disability, a lump sum compensation of Rs.30,000/- was awarded by the Tribunal, for pain and suffering, loss of income, loss of earning capacity, actual treatment etc.

11. As regards compensation to be paid for the unfortunate death of the two year old son of the appellant, rejecting the claim that even under the amended Section 140 of the Motor Vehicles Act, a compensation of Rs.25,000/- was provided on the principle of no fault liability, the Tribunal went on to hold that the amendment had come about w.e.f. 01.07.1989, whereas the accident had taken place on 10.06.1989 and consequently, the minimum amount could not be taken to be Rs.25,000/-.

Therefore, further citing a judgment of a Full Bench of this Court in ***Bimla Devi and others vs. National Insurance Co.Ltd. And another, 1988 ACJ 1981***, wherein Rs.6000/- had been ordered to be paid as compensation for the death of a child less than 5 years old, a sum of Rs.15,000/- was awarded in the present case to the appellant, by the Tribunal, in view of the fact that the accident in this case was about 7 years after the accident in the case before the Full Bench.

12. As regards the compensation to be paid for the death of the appellants' wife Rajeshwari, it was found that contrary to the pleadings, wherein she was stated to be a self employed person earning Rs.900/- per month by ironing clothes, the testimony of the appellant was to the effect that she used to work for him and he used to pay her Rs.1200/- per month, with her also earning separately by ironing clothes etc.

However, the register produced from the school not having been found to be authentic, as no entries after April 1989 were seen to have

been made therein and further, the appellant at one stage also having admitted that whatever he used to pay his wife she used spend on herself, her individual income was not accepted by the Tribunal and eventually a lump sum of Rs.40,000/- was awarded for her death.

13. Before this Court, essentially arguments were addressed by the learned counsel for the appellant in respect of the compensation awardable for the death of wife and child of the appellant, though Mr. Aggarwal also did submit that the amount of Rs.30,000/- awarded for the injuries suffered by the appellant was also not adequate.

14. As regards the notional income of a house wife, Mr. Harsh Aggarwal submitted that even in *Lata Wadhwa and others vs. State of Bihar and others, 2001(4) RCR (Civil) 673*, the Supreme Court had assessed the income of a house wife to be Rs.3000/- per month, with the occurrence in that case being of the year 1989, though not in a motor accident but a fire tragedy.

Learned counsel further submitted that when the deceased was a 26 year old lady, awarding just Rs.40,000/- for her death was wholly unjustified.

15. As regards the compensation of Rs.15,000/- awarded for the death of the two year old son of the appellant, Mr. Aggarwal relied upon a judgment of the Supreme Court in *Kishan Gopal and another vs. Lala and others, Civil Appeal no.7137 of 2013*, decided on 26.08.2013, wherein their Lordships awarded a total sum of Rs.5 lacs to the parents, for the unfortunate death of a 10 year old child.

Mr. Aggarwal submitted that in that case the accident took place on 19.07.1992, and therefore the accident in the present case being

only 3 years earlier, Rs.15,000/- was wholly inadequate compensation.

16. *Per contra*, Mr.Pardeep Kumar, learned counsel appearing for the respondent-insurance company, first submitted that as regards the compensation awarded in respect of the death of the appellants' wife, in the year 1989, a house wives' income could not be taken to be Rs.3000/-, especially when the income of the husband was accepted to be only Rs.1000/- to 1200/- per month.

As regards the compensation in respect of the child, Mr.Pardeep Kumar submitted that in ***Kishan Gopals' case (supra)***, the child was 10 years old, whereas in the present case he was only 2 years old.

As regards the compensation awarded by the Tribunal in respect of the injuries suffered by the appellant, learned counsel for the insurance company submitted that Rs.30,000/- was more than adequate compensation in the year 1989.

17. Having considered the arguments of learned counsel for the parties, as also Award of the learned Tribunal, first of course, as regards the compensation in respect of the injuries suffered by the appellant, I find no error in the Tribunals' findings that with the appellant admittedly employing 5 to 6 servants to assist him in the task of washing and ironing the clothes of the children of the hostel, his income never decreased.

The only issue to be considered is as to whether in respect of the loss of contribution by the appellant himself, for the two months that he remained in hospital, and possibly a month thereafter, as also for the pain and suffering that he went through, plus the amount spent by him on medical treatment, the compensation of Rs.30,000/- is adequate or not.

18. To break it up, as regards the loss of income for 3 months, there

being no reason to assess the income of the appellant to be more than Rs.1200/- per month in terms of the documentary evidence referred to by the Tribunal and discussed hereinabove, he therefore would have suffered a loss of Rs.3600/- as regards his own contribution. The Safdarjang Hospital being a government hospital, most of the treatment would have been free but for the medicines that the appellant would have purchased and the special diet he presumably would have consumed, in addition to miscellaneous expenses. As regards such expenses, including medicines and diet, Rs.3500/- over a period of 3 months, in the year 1989, is considered sufficient and is therefore awarded to the appellant, in addition to Rs.3600/- by way of loss of actual income for 3 months.

However, the remaining amount of Rs.22,900/- (out of Rs.30,000/-) would not be wholly adequate compensation for pain and suffering in respect of three fractures in the leg and remaining in hospital for 2 months and recuperating thereafter, other than the fact that there was shown to be a shortening of the limb also.

Consequently, Rs.35000/- is awarded to the appellant on account of pain and suffering and the shortening of the leg. In addition, he is also awarded Rs.3600/- for actual loss of income and Rs.3500/- for medical treatment, special diet and miscellaneous expenses such as transportation and the services of an attendant over a two month period. Hence, a total amount of Rs.42,100/- is awarded in all to the appellant, on account of the injuries suffered by him, rounded off to Rs.42,000/-.

19. Coming then to the compensation of Rs.15,000/- awarded to him by the Tribunal on account of the death of his two year old son.

This Court has absolutely no hesitation in stating that the said

paltry sum is not in manner even near the compensation that should have been awarded for the loss of an almost infant child, due to which the grief of a father can only be imagined, with him also having lost his wife in the same accident.

Hence, his two year old son having been lost to him forever, the compensation of Rs.2 lacs sought by the appellant in his petition is not considered excessive in any manner, and is so awarded to him, even seeing that the loss occurred in the year 1989.

20. Coming last to the quantum of compensation awardable to the appellant on account of the death of his wife.

As regards the income of his wife, I do not disagree with the reasoning given by the Tribunal, that with it not proved that she was actually drawing a salary of Rs.1200/- from the appellant himself along with 4 or 5 other employees and further, even if she was so drawing that salary the appellant himself having admitted that she was spending it all on herself alone, that salary cannot be a loss of income to the appellant.

However, whether the late wife of the appellant was a house wife, or earning separately by ironing clothes etc., it being a very common feature that in a washermans' family, his wife does the ironing while he does washing, most definitely, in either case, there was a loss of income to him. However, to assess that loss of income, to be Rs.3000/- per month as contended by learned counsel for the appellant, whether wholly as a house wife or by way of her contribution from ironing clothes etc., that figure cannot be accepted, in view of the fact that the appellant himself had only claimed her income to be Rs.900/- per month at least as per his written pleadings, i.e. in the claim petition. Accepting that sum (Rs.900/-) to be the

actual or notional income of the lady of a house, it is not considered excessive by this Court in any manner, even in the year 1989.

However, from that amount a $\frac{1}{3}^{\text{rd}}$ amount would need to be deducted towards the personal expenses of the deceased, thereby making the loss of income (even notional income) to the appellant, to be Rs.600/- per month, or Rs.7200/- per annum.

The deceased, Rajeshwari, having been accepted to be 26 years old, with nothing shown to the contrary to this Court, a multiplier of 17 would be applicable to the aforesaid income, thereby making the loss of income to the appellant to be Rs.1,22,400/-.

However, if he remarried, the multiplier of 17 would not be applicable in the opinion of this Court, and with him shown to be 30 years old in his claim petition, it cannot be expected that he did not remarry. Consequently, the multiplier actually applied to assess his loss of income is 7. Thus the loss of income on account of the death of Rajeshwari is assessed at Rs.50,400/-.

The appellant would also be entitled to compensation for loss of consortium, which is now accepted to be Rs.1 lac and is so awarded, even though the accident is of the year 1987, but nevertheless the appellant definitely having lost his spouse.

He would also be entitled to Rs.10,000/- towards funeral expenses and last rites, though presently the sum awardable under that head is Rs.25,000/-.

21. Consequently, the total compensation now awarded to the appellant is as follows:-

1. Towards his own injuries, including pain and suffering, permanent disability, treatment expenses and temporary loss of income (in FAO-478 -1991)	Rs.42,000/-
2. Towards loss of consortium of his spouse (in FAO-1164-1991)	Rs.1,00,000/-
3. Towards loss of income of the spouse (ditto)	Rs.50,400/-
4. Towards her last rites -do-	Rs.10,000/-
5. Towards the last rites of his child -do-	Rs.10,000/-
6. Towards loss of his two year old child -do-	Rs.2,00,000/-
Total	4,12,400/-

Therefore the amount now awarded by this court in both these appeals is Rs.3,27,400/- more than the Rs.85,000/- awarded by the Tribunal in both the claim petitions before it.

The enhanced amount would carry interest @ 9% per annum from the date of filing of the claim petitions till the date of the Award of the Tribunal and 6% per annum thereafter, till the payment is actually realized by the appellant, rates of interest of banks having dropped sharply since 1989-90. The appellant would also be entitled to costs of Rs.1000/- in respect of each appeal.

The appeals are accordingly allowed as above.

(AMOL RATTAN SINGH)
JUDGE

June 16, 2017.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No