IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 359 of 2003 (O&M)

Date of Decision: 31.10.2017

Gurdev Kaur and others

.......Appellants

Versus

Sukhwinder Singh and others

......Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Mannat Anand, Amicus-curiae,
for the appellants.

Mr. Y.S. Turka, Advocate
for respondents No. 1 to 3.

Mr. Ravinder Arora, Advocate and
Mr. Rohit, Advocate
for respondent No.4.

AVNEESH JHINGAN, J.

An enhancement appeal has been filed by the legal heirs of deceased Sahib Singh.

The record of this case was burnt and has been reconstructed from the salvaged record and copies supplied by counsels subject to all just exceptions.

Thereafter notice was sent to the counsel for the appellants who had filed the present appeal but the report has come that the same could not be served as his name does not find mention in the Bar Directory. Since the case is under welfare legislation, Ms. Mannat Anand, Advocate, who is present in Court, is appointed as Amicus-curiae, to argue the present appeal. Paper book of the appeal was handed over to her and she has gone through it.

The factual matrix of the case are that on 1.7.1998 Sahib Singh met with a motor vehicular accident. The tractor in which he was travelling was hit by a rashly and negligent driven DCM Tayota bearing registration No.CHW-8221. As a result of the accident, Sahib Singh suffered injuries and lost his life.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), was filed by the widow and two minor children of the deceased.

The Motor Accidents Claims Tribunal, Patiala (for short 'the Tribunal') awarded a sum of Rs.1,64,000/-as compensation along with interest at the rate of 9% per annum, vide award dated 16.8.2002.

The facts have not been disputed by the parties.

Learned counsel for the appellants argued that the deceased was 45 years of age at the time of accident and multiplier of 11 has been applied whereas multiplier of 14 should have been applied. She further contended that an amount Rs.32000/- has been awarded for medical expenses whereas he was hospitalized for 31 days and no amounts under various conventional heads have been awarded.

Learned counsel for the respondents argued that the accident is of the year 1998 and the amount awarded is just and equitable and no enhancement is called for.

The contentions raised on behalf of the appellants have substance and deserve acceptance keeping in view decision of Hon'ble the Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121***.

In order to attain the same sort of uniformity, the method was evolved and the table according to the age of the deceased was made. According to the decision of Hon'ble Apex Court, the deceased was 45 years of age and therefore, a multiplier of 14 should have been applied instead of 11. Since there is no dispute with regard to the income assessed and the deduction for self expenses, the loss of dependency is calculated by applying the multiplier of 14, as below:

1000 x 12 x 14 =1,68,000/-.

It has not been disputed that the deceased was survived by a widow and two minor children. The Tribunal should have considered various amounts to be awarded under the conventional heads as has been held by Hon'ble the Apex Court in ***Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767,*** 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.*
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> *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.***

> ***Kunjujamma 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-loss of estate, funeral expenses and loss of consortium and also awarded compensation under the head of loss of love, care and guidance of the minor children.

Hon'ble the 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 Santhosh 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."

There is no dispute that deceased remained hospitalized for almost 31 days before he succumbed to injuries. It such circumstance, it cannot be expected from the family members to maintain account and to retain the bills and vouchers for each and every expenses, therefore medical expenses also needs to be enhanced.

Keeping in view the decisions of Hon'ble the Apex Court as referred above and the facts of the case that two minor children have lost their father and there was a widow also, the amounts under various conventional heads are awarded as per Table given below:

Sr. No.	***Description***	***Amount earlier awarded by the Tribunal***	***Amount now awarded***
1	Loss of dependency	Rs.1,32,000/-	1,68,000/-
2	Medical expenses	Rs.32,000/-	Rs.50,000/-
3	Loss of consortium	Not awarded	Rs.15,000/-
4	Loss of love and affection	Not awarded	Rs.50,000/-
5	Funeral expenses	Not awarded	Rs.15000/-
	Total:	Rs.1,64,000/-	Rs.2,98,000/-

The award dated 16.8.2002 is modified to the extent that an amount of Rs.1,64,000/- awarded by the Tribunal, is enhanced to Rs.2,98,000/-. The claimants would be entitled to the enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the petition till its realization.

The appeal is disposed of in the above terms.

(AVNEESH JHINGAN)
JUDGE

31.10.2017
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Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No