

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.3776 of 2002

Date of Decision.02.08.2017

Kuljit KaurAppellant
Vs
Lillu Ram and othersRespondents

2. FAO No.1343 of 2002

Mehar KaurAppellant
Vs
Lillu Ram and othersRespondents

Present: Mr. Vikram Bali, Advocate
for the appellant in FAO No.3776 of 2002.

Mr. Hitesh Kumar Sammi, Advocate for
Mr. Nand Lal Sammi, Advocate
for the appellant in FAO No.1343 of 2002.

Mr. Tara Chand Dhanwal, Advocate
for respondent No.1 and 2.

Mr. Vinod Chaudhari, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two appeals filed for enhancement of compensation for death of one Nachhattar Singh aged 25 years, who died in a motor accident on 17.8.1999. FAO No.3776 of 2002 is by the widow of the deceased namely Kuljit Kaur and FAO No.1343 of 2002 is at the instance of the mother-Mehar Kaur. The deceased was stated to be running a dairy farm and earning ₹10,000/- per month.

In the absence of any income proof, the Tribunal had taken the income of the deceased as ₹1800/- per month, applied a 1/3rd deduction towards personal expenses and adopted a multiplier of 17 to assess the loss of dependency as ₹2,38,000/-. Besides this a sum of ₹10,000/- was also

awarded towards loss of consortium and funeral expenses, thus, in total a sum of ₹2,48,000/- was awarded.

Mr. Vikram Bali, learned counsel appearing on behalf of the widow i.e. the appellant in FAO No.3776 of 2002 submits that the Tribunal took the income of the deceased on lower side, much less, the multiplier should have been 18 for a person aged 25 years instead of 17. The Tribunal provided a meager amount of ₹10,000/- for loss of consortium and funeral expenses, thus, there is scope for enhancement.

Mr. Hitesh Kumar Sammi for Mr. Nand Lal Sammi, learned counsel appearing for the mother i.e. the appellant in FAO No.1343 of 2002 submits that Kuljit Kaur i.e. the wife of her deceased son has remarried to one Kuldeep Singh, therefore, she is not entitled to any compensation. The counsel further submits that the Tribunal besides adopting of lesser income and multiplier, did not provide anything for loss of love and affection, thus, urges this Court for modification of the award passed by the Tribunal by allowing the appeal filed by her and dismissing the appeal filed by Kuljit Kaur.

Mr. Vinod Chaudhari, learned counsel appearing for the insurance company and Mr. Tara Chand Dhanwal, learned counsel appearing for respondent No.1 and 2 submits that the Tribunal has assessed the compensation correctly and there is no scope for enhancement. The wife of deceased Nachhattar Singh has already remarried, therefore, there is no question of granting loss of consortium, thus, urges this Court for dismissal of the appeals by upholding the award passed by the Tribunal.

I have heard learned counsel for the parties and appraised the paper book. As regards the appeal filed by the wife, there is statement of

mother that she has been remarried. Now the question posed before this Court is whether the widow who has performed second marriage would be entitled for compensation for death of her first husband? This Court had an occasion to deal with the similar issue in **Surjit Kaur Vs. Rajwinder Singh and others** in FAO No.739 of 2010 decided on 08.08.2016 and while adverting to the provisions of Hindu Succession Act, 1956 and the Motor Vehicles Act, 1988, this Court answered the same in affirmative. The Madhya Pradesh High Court in **Pramila and others Vs. Sarvar Khan and others 2003 ACJ 542** while awarding the compensation to the widow after remarriage observed as under:-

“ 14. Proceeding further, husband is entitled to claim compensation in the event of death of wife even if he is earning himself and dependency is calculated on the income of the deceased wife or contribution for the family. After the death of such a wife, the husband marries. Is his right to compensation forfeited? The answer to this question is in the negative. When this is so in case of husband, why different principle be made applicable in case of wife who marries after the death of husband? Compensation awarded by Motor Accidents Claims Tribunal under the [Motor Vehicles Act, 1988](#), is not maintenance. It is a compensation for the loss sustained by the legal representative(s) for the death of their relation. The legal representatives become entitled to compensation on the occurrence of the accident and death of the relation. Widow has absolute right to compensation allowed by the Claims Tribunal which should not be influenced by the fact that the wife has married after the accident.

15. There is another reason for allowing the claim of the widow for full compensation, to which she has been held entitled by the Claims Tribunal, based on higher and broader perspective. National policy allows woman equal status with man, in all spheres of activities. Both are given equal rights. Government and non-governmental organizations emphasize remarriage of a widow. When a man can remarry, why cannot a woman? It is understandable that life of a

widow, after the death of her husband, in the family cripples abnormally. Generally, she is subjected to all kinds of indignities, compelling her to leave and fall back on parents where she is taken to be an eye-sore by the families of her brothers, particularly when parents are not alive, and even if they are alive, they can hardly look after her due to old age. With this background, it is considered necessary that a widow marries as early as possible. Therefore, in case she has done so, her claim for compensation cannot be defeated by remarriage. It would be highly improper to compel her to lead a life of widow till she receives the compensation on the termination of court case or else forfeit the right. The compensation continues to maintain her throughout her life since second marriage cannot be as good as the first marriage. It is by compulsion. She was not responsible for the death of her husband in the accident, therefore, she cannot be divested of the absolute right to claim compensation on remarriage. [The Motor Vehicles Act, 1988](#) does not debar her. Since she becomes entitled to the compensation, she cannot be divested from it. These submissions were not advanced before the learned Judges in Anju Mukhi's case, 1998 ACJ 400 (MP), therefore, that case is clearly distinguishable and decisions in Sobha Jain's case, 1983 ACJ 327 (Patna) and Kiran Lata's case, 1993 ACJ 130 (Rajasthan), are more pragmatic and give broader thrust to widow's right to compensation on death of her husband. It is important that 'dependent' and 'legal representative' are given practical, purposeful and pragmatic meaning to avoid damage to the entitlements of widow who remarries after the death of her husband in the accident. In this case, the widow marries after the award of compensation in her favour by the Claims Tribunal. The result, therefore, is that the plea raised by the two other claimants (parents) is not sustainable and is, therefore, rejected. Respondents are held responsible for payment of compensation jointly and severally.”

The Allahabad High Court took a similar view in **United India Insurance Co. Ltd. Vs. Smt. Baby and others** in FAO No.1942 of 2016 decided on 16.12.2016 while relying upon the judgments passed by this Court in **Sunita Vs. Ram Kumar (2012) 4 Law Herald (P&H) 3325** and

Katar Kaur and others Vs. Manoj Kumar and others 2015 ACJ 1836. The Gauhati High Court in *State of Tripura and another Vs. Bela Dey (Das) and another 2011 ACJ 1625* held that widow becomes legal representative of her husband immediately on his death and right to compensation accrues in her favour. She cannot be divested of her right to get compensation for the death of her husband on her remarrying during the pendency of claim petition.

Keeping in view the judgments cited supra, it is crystal clear that remarriage is not a bar for awarding compensation to the widow. Therefore, I will take the income of the deceased as ₹1800/- per month, apply a deduction of 1/3rd towards personal expenses and adopt a multiplier of 18 to assess the loss of dependency as ₹2,59,200/-. I will further add to it ₹1 lac for loss of consortium to the wife, ₹50,000/- towards loss of love and affection to the mother, ₹10,000/- towards loss of estate and ₹25,000/- towards funeral expenses.

In all, the compensation payable shall be ₹4,44,200/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. The enhanced amount shall be distributed in the ratio of 60:40 between widow and mother. The liability shall remain the same as has already been assessed by the Tribunal.

The award stand modified and the appeals are allowed to the above extent.

(AMIT RAWAL)
JUDGE

August 02, 2017
Pankaj*