

F.A.O. No. 3128 of 2001

[1]

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

F.A.O. No. 3128 of 2001

Date of Decision: 21 - 8 - 2017

Smt.Krishna and another

.....Appellants

v.

Jasbir Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

Present: Mr.Sumeet Singh Deol, Advocate
for the appellants.

Mr.Suvir Dewan, Advocate
for respondent No3.

RAJ SHEKHAR ATTRI, J.

This appeal has been preferred by the claimants, namely, Smt.Krishna and Aman Kumar who are widow and son respectively of deceased Ram Pal, against the award dated 7.4.2001 passed by the Motor Accident Claims Tribunal, Karnal.

Briefly stated, it is case of the claimants-appellants that on 3.11.1998 deceased Ram Pal was going on the left side of the road when he was struck down by a truck bearing No.HYK-3975 driven by respondent- Jasbir Singh Rajpoot in a rash and negligent manner. FIR No.488 dated 3.11.1998 (Ex.P1) was registered. The instant claim petition was preferred

by the appellants on the ground that the deceased had died due to the rash and negligent driving of the said driver. According to the claimants the deceased was having good physique; he was cultivating land and also running a milk diary; and his total income was Rs.4500/- p.m. It is further added in the claim petition that due to untimely death of Ram Pal, they have suffered mental pain and agony and have remained with no source of income because the deceased was the the only bread winner and that they have been totally ruined. The claim petition was contested by respondents No.1 and 2, who had denied the factum of accident and the remaining averments of the petition were denied. The Insurance Company has also denied the factum of the accident, albeit, they alleged that driver of the vehicle was not holding a valid and effective driving licence. However, the factum of insurance of the truck was admitted.

From the pleadings of the parties, learned Motor Accident Claims Tribunal, Karnal (hereinafter to be referred as, 'the Tribunal') framed the following issues:-

- 1) Whether the accident causing fatal injuries to Ram Pal son of Shri Chandgi Ram was the result of negligent driving of truck No.HYK-3975 by its driver – Respondent No.1 as alleged? OPP
- 2) Whether the claim petition is bad for mis-joinder and non-joinder of necessary parties? OPRs 2 & 3
- 3) Whether the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident, as alleged? OPR3
- 4) To what amount of compensation the claimants are entitled to recover, if so, from whom? OPPs
- 5) Relief.

The learned Tribunal has afforded adequate opportunities to both the parties to adduce evidence and on appreciation of the same, it was observed that the accident has taken place due to rash and negligent driving of respondent –driver and that the driver was holding a valid driving licence. It was further observed that deceased Ram Pal was agriculturist by profession and was also running a dairy. However, his age was assessed between 24-25 years. His income was taken as Rs.1200/- p.m. and multiplier of 16 was applied. The claimants were also awarded a sum of Rs.10,000/- for performing the last rites of the deceased. Thus, a total sum of Rs.2,40,000/- alongwith costs and interest at the rate of 9% per annum was awarded.

I have heard learned counsel for the parties have gone through the record.

Learned counsel for the appellants has submitted that the deceased was hale and hearty who left behind his young aged widow and a minor son; that the Tribunal has under assessed his income as Rs.1200/- p.m. which is on the meager side and further that multiplier of 16 has been applied whereas multiplier of 18 is admissible as per the Schedule attached with the Act; that no compensation was given for loss of love and affection; for consortium and future prospectus as deceased was of 24 years of age.

On the other hand, learned counsel for the respondents have vehemently contended that neither there is any proof of income of the deceased nor there is any evidence if the deceased was cultivating the land on lease and that nothing has been produced on record to prove that the deceased was running a dairy farm. According to learned counsel for the appellants, the compensation awarded by the learned Tribunal is most

appropriate and there is no scope for enhancement thereof.

This Court has given its thoughtful consideration to the rival contentions and gone through the evidence available on the record. The factum of accident is well proved and no appeal has been preferred by any of the respondents.

There is no dispute with regard to age of the deceased, yet no documentary proof is produced to establish his age. Keeping in view the facts and circumstances of the case, this Court is of the view that age of the deceased be taken between 25 to 30 years. Now coming to the income of the deceased. The learned Tribunal has observed that the claimants have not adduced any cogent evidence with regard to the income of the deceased. If we go through the statement of Smt.Krishna Devi who appeared as PW2, then it transpires that she has categorically stated that deceased Ram Pal had been cultivating 3 acres of land as his own holding and used to take 6 to 7 acres of agricultural land on lease for cultivation. PW2 has categorically stated that deceased was having buffalos and selling the milk and used to earn Rs.40,000/- per annum from the agriculture profession. In the cross-examination she has stated that she has not maintained any record regarding income of milk. She is a rustic lady of 22 years and deceased Ram Pal was also an illiterate person. Second claimant was a minor at the time of preferring the claim petition. Generally in the ruralities the agriculturist class of the society sells milk to enhance the family income but no record is maintained in this regard. In the cross-examination, the respondents have not denied that the deceased was running the dairy but they questioned her for not maintaining the record with regard to the income by selling the milk.

In the examination-in-chief PW2 Smt.Krishna has stated that the deceased

was having 4-5 buffalos. In these circumstances, this Court is of the view that the learned Tribunal failed to take into consideration the income yielded by selling milk by the deceased. Thus, this Court assesses the income of the deceased as Rs.1500/- p.m. by selling the milk. Even, in those days the labourers had been earning not less than Rs.1200/- p.m. Even a suggestion was given to PW2 Krishna that she is doing labour and earning Rs.800/- p.m. She had been maintaining a child and also doing household chores and in this situation the respondents had accepted her income as Rs.800/- p.m. In these circumstances, this Court is of the view that deceased might be earning Rs.1200/- p.m. by doing cultivation. Thus, his total incomes from both the sources comes to Rs.2700/- p.m. Had he been alive, he must have spent 1/3rd upon himself and thus the dependency comes to Rs.1800/- p.m. and annual income comes to Rs.21,600/- per annum.

Now coming to the avenues of future prospectus, as per the law laid down by the Hon'ble Supreme Court in *Rajesh and others v. Rajbir Singh and others*, 2013(3) R.C.R. (Civil) 170, the persons, who are employed and less than 40 years of age, **future prospectus** @ 50% should have been granted. Keeping in view the law laid down by Hon'ble Supreme Court and again as held by the three Judges Bench of the Hon'ble Supreme Court in *Munna Lal Jain and another v. Vipin Kumar Sharma and others*, 2015(3) R.C.R.(Civil) 447, wherein it has been held that the **future prospectus** should be 50% in case of self-employed person. Therefore, in view of the above discussion, the claimants are entitled to **future prospectus** @ 50%. To my mind, in this case, the deceased was a young man between 25 to 30 years of age and was doing cultivation on his own land as well as by taking land on lease. Apart from it, he was running a dairy farm. All

these factors establish that he was keen to augment his income by doing hard labour and also establish that he was having good future prospectus. To the mind of this Court, the claims are entitled to 50% gain of the total income of the deceased as future prospectus which comes to Rs.10,800/- and thus the total income to Rs.32,400/-.

Now coming to the applicability of suitable multiplier. In *Sarla Verma v. DTC*, 2009(3) R.C.R.(Civil) 77 it was held as under :

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M- 13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

As per Second Schedule attached with the Act, the multiplier of 17 is the most suitable. Thus, the income comes to Rs.32,400 x 17 = Rs.5,50,800/-.

Smt.Krishna PW2 has stated that Rs.10,000/- were spent in performing the last rites of the deceased. This Court is of the opinion that the claimants are entitled to Rs.10,000/- with regard to funeral expenses. Apart from this, Smt.Krishna is entitled to Rs.5,000/- for loss of consortium. Both the claimants are also entitled to Rs.10,000/- each for the loss of love and affection. Thus, the total amount comes to Rs.5,85,800/-.

In this view of the matter, this appeal is accepted to this extent.

Now the claimants are entitled to a sum of Rs.5,85,000/- in total. However, the compensation already paid to them shall be adjusted in this amount. The amount be deposited directly in the names of the claimants within 90 days, failing which the claimants shall be entitled to interest at the rate of 9% per annum from the date of filing the appeal till realisation. All the respondents are liable to pay the enhanced amount of compensation jointly and severally.

August 21st, 2017.

(RAJ SHEKHAR ATTRI)
JUDGE

RC

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>