

347 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-120-2004

Date of decision: 11.08.2017

Savitri Devi and others

.... Appellants

Versus

Ram Pal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Vinod Kumar, Advocate for
Mr. Ashit Malik, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate
for New India Assurance Company Ltd.

Avneesh Jhingan, J.

This is an appeal arising out of award dated 11.10.2003 passed by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal'). The widow, two minor daughters and two minor sons of deceased Mohinder Singh filed the claim petition before the Tribunal. The Tribunal allowed a total claim of Rs.3,16,500/- to the claimants. Aggrieved of the said order, the present appeal has been filed for enhancement of compensation.

The brief facts necessary for adjudication of the present appeal are that on 4th March, 2002, Mohinder Singh (deceased) at around 8.00 p.m. started from shop from Assandh town and was going towards his house situated on Assandh-Salwan Road. While crossing the road, he was struck by the 'Yamaha' Motorcycle bearing registration No. HR-40-8743. The said motorcycle was being driven by Dr. Ram Pal in a rash and negligent manner at a very high speed. Due to impact, the deceased sustained multiple injuries on vital parts of his body and

ultimately succumbed to the injuries on the spot. The motorcycle was owned by Sanjay Goel and was insured with New India Assurance Company Ltd.

The Tribunal on the basis of the evidence and witnesses produced held that the accident occurred due to rash and negligent driving. Further, it was held that driver was holding a valid licence. With regard to the compensation part, the Tribunal was not satisfied with the claim made by the claimants that the deceased was Mistri and earning Rs.8,000/- per month. The Tribunal took his wages equivalent to daily wager i.e Rs.2400/- per month. A deduction of 1/3rd for his self expenses was made and considering his age as 39 years, a multiplier of 17 was applied. A sum of Rs.5,000/- was awarded for loss of consortium and Rs.4300/- was given for funeral expenses. The claimants were awarded a total sum of Rs.3,16,500/-.

The claimants claimed a sum of Rs.10 lakhs as compensation. It was claimed that the deceased was working as a mason and was earning Rs.6,000/- monthly salary. Salary register Ex.P4 was produced. The register showed that the deceased was working with M/s Dangi Engineering Work, Karnal. The Tribunal rejected the register as being not maintained in due course of business. The Tribunal on perusal of the register found that there were only two employees shown to be working, moreover the register started in April 2001 and the last entry was of March, 2002. Since the evidence with regard to the income of the deceased as Rs.6,000/- per month was rejected by the Tribunal, the Tribunal treated the deceased as a daily wager and took his notional monthly income as Rs.2400/-.

Learned counsel for the appellants argued that the deceased was survived by 5 dependents, i.e. two minor daughters, two minor sons and widow, therefore, the Tribunal erred in making 1/3rd deduction, on account of self expenses.

On the other hand, learned counsel for the respondent – Insurance Company argued that 1/3rd deduction is the minimum which should have been made for self expenses and award of the Tribunal in this regard calls for no interference.

This Court in **Punjab State Bus Stand & Management Company Ltd. (PUNBUS) and others vs. Harjit Kaur and others, 2016 (2) LAR 269** held as under :-

*“12 PW3 Charan Dass stated that the deceased was working as Home Guard on daily wages basis and was getting Rs.386/- per day as wages and Rs.80/- as washing allowance per month. His monthly salary was Rs.12,046/-. However, during his cross-examination he stated that the services of the deceased could be terminated at any time as he was working on daily wage basis. Thus, considering the deceased as a casual labourer, the income of the deceased was rightly assessed as Rs.7500/- per month by learned Tribunal. The age of the deceased was taken as 44 years and the multiplier of '14' was rightly applied. There were four dependents on the income of the deceased namely his wife-Harjit Kaur, son-Tejinder Singh and daughters-Manpreet Kaur and Rajwinder Kaur and as per the law laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77**, 1/4th of the income was rightly deducted by learned Tribunal towards*

personal and living expenses of the deceased himself.

*13 However, perusal of the award shows that no amount was added to the income of the deceased computing future prospects. In view of law laid down in **Rajesh and others vs. Rajbir Singh and others, 2013 (3) R.C.R. (Civil) 170** as the age of the deceased was 44 years, the claimants are entitled to increase in the income of the deceased by 30% considering his future prospects. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-*

1	Monthly income of the deceased (in Rupees)	Rs.7500/-
2	Actual age of the deceased	44 years
3	Increase in future income as per Rajesh and others case (supra)	Rs.2250/-
4	Annual dependency	3/4 of Rs.9750 x 12 = Rs.87,750/-
5	Multiplier	14
6	Total	Rs.12,28,500/-

Similarly, in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, observed as under :-

“14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the

general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.”

A perusal of the above said decisions clearly show that where the dependents of the deceased are four to six, the deduction of 1/4th as his personal expenses is to be made. In the present case, the deceased had four minor children and a widow. In the facts of the present case, the deduction of 1/4th ought to have been made and the monthly contribution should have been taken at Rs.1800/- per month.

Learned counsel for the appellants submitted that the deceased was 39 years of age at the time of the accident. Hence, the multiplier of 17 has been wrongly applied. Rather a higher multiplier should have been applied.

Learned counsel for the respondent – Insurance Company submitted that keeping in view the age of the deceased at the time of the accident, the multiplier of 17 applied by the Tribunal is on higher side, rather it should have been 15.

So far as challenge to multiplier of 17 is concerned, the Hon'ble Apex Court in case of **Reshma Kumari Vs. Madan Mohan 2013(9) SCC 65**, further relying upon **General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Mrs. Susamma Thomas and others, 1994(2) SCC**

176 has held as under:-

32. In Susamma Thomas, this Court – though with reference to Section 110B of the Motor Vehicles Act, 1939 – stated that the multiplier method was the accepted norm of ensuring the just compensation which will make for uniformity and certainty of the awards. We are of the opinion that this statement in Susamma Thomas is equally applicable to the fatal accident claims made under Section 166 of the 1988 Act. In our view, the determination of compensation based on multiplier method is the best available means and the most satisfactory method and must be followed invariably by the tribunals and courts.”

It was held that applying multiplier is most satisfactory and best method and must be followed by Courts.

Keeping in view the totality of facts and circumstances of the case and after considering the age of the deceased was 39 years, no interference is called for in multiplier of 17.

Keeping in view the deduction, the monthly contribution and the multiplier the compensation is calculated as under :-

Monthly Income	:	Rs.2400/-
$\frac{1}{4}^{\text{th}}$ deduction on personal expenses	:	Rs.600/-
contribution to the family	:	Rs.1800/-
Total	:	$1800 \times 12 \times 17 = 3,67,200/-$

Learned counsel for the appellants contended that the Tribunal has not granted any amount to the minor children of the deceased for loss of love and

affection. It was further argued that the amount of Rs. 5,000/- awarded by the Tribunal for loss of consortium and a sum of Rs. 4,300/- awarded for funeral expenses and loss of estate is on the lower side, which requires enhancement.

Learned counsel for the respondent – Insurance Company has defended the amounts awarded by the Tribunal for loss of consortium and expenses of funeral and loss of estate. It was further argued that since the compensation has already been awarded to the appellants, therefore, there is no occasion to grant any amount under the head of 'loss of love and affection'.

The Apex Court in **Asha Verma and others vs. Maharaj Singh and others, 2015(2) R.C.R. (Civil) 520,** observed as under :-

*“18. Further, we award Rs.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 Rs.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.***

19. Further, the High Court has erred in awarding an interest at the rate of 8% per annum only, instead of 9% per annum on the compensation amount as per the

*principles laid by this Court in the case of **Municipal Corporation of Delhi vs. Association of Victims of Uphaar Tragedy, 2012(3) R.C.R. (Civil) 203 : 2012(3) Recent Apex Judgments (R.A.J.) 92 : (2011) 14 SCC 481.** We accordingly award an interest at the rate of 9% per annum on the compensation amount.*

20. *In the result, the appellant shall be entitled to compensation under the following heads:*

1	Loss of dependency	Rs.9,93,600/-
2	Loss of estate	Rs.1,00,000/-
3	Loss of consortium	Rs.1,00,000/-
4	Loss of love and affection to children	Rs.2,00,000/-
5	Funeral expenses	Rs.25,000/-
6	Medical expenses	Rs.1,40,000/-
7	Loss of love and affection to parents	Rs.1,00,000/-
	TOTAL	Rs. 16,58,600/-

The Hon'ble Apex Court in **Jiju Kuruvila and others vs. Kunjuamma Mohan and others, 2013(3) R.C.R.(Civil) 817,** held as under :-

*“29. On the basis of the aforesaid annual income and exchange rate of Rs. 17.30 per US Dollar as applicable in April, 1990 (Ext.-A7), the annual income of the deceased if converted in Indian currency will be 30,000 x 17.30 : 5,19,000/- at the time of death. The deceased was 45 years of age, therefore, as per decision in **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., 2009(3) RCR (Civil) 77 : 2009 (3) Recent Apex Judgments***

(R.A.J.) 373 : (2009) 6 SCC 121, multiplier of 14 shall be applicable. But the High Court and the Tribunal wrongly held that the multiplier of 15 will be applicable. Thus, by applying the multiplier of 14, the amount of compensation will be Rs.5,19,000 x 14 =Rs.72,66,000/-. The family of the deceased consisted of 5 persons i.e. deceased himself, wife, two children and his mother. As per the decision of this Court in **Sarla Verma (supra)** there being four dependents at the time of death, 1/4th of the total income to be deducted towards personal and living expenses of the deceased. The High Court has also noticed that out of 2,500 US Dollars, the deceased used to spend 500 US Dollars i.e. 1/5th of his income. Therefore, if 1/4th of the total income i.e. Rs.18,16,500/- is deducted towards personal and living expenses of the deceased, the contribution to the family will be (Rs.72,66,000–Rs.18,16,500/=)Rs.54,49,500/-.

Besides the aforesaid compensation, the claimants are entitled to get Rs.1,00,000/- each towards love and affection of the two children i.e. Rs.2,00,000/-and a sum of Rs.1,00,000/- towards loss of consortium to wife which seems to be reasonable. Therefore, the total amount comes to Rs.57,49,500/-.”

As per the decisions of the Hon'ble Apex Court cited above, four minor children should have been awarded the amount under the head of loss of

love and affection. In the facts and circumstances of the case, a sum of Rs.50,000/- each to the minor children is granted under the head of loss of love and affection. Thus, the amount of Rs.2 lakhs is awarded for loss of love and affection.

Keeping in view the age of the deceased at the time of the death was just 39 years and the deceased left four minor children and a widow, the loss of consortium amount granted by the Tribunal of Rs.5,000/- is increased to Rs.75,000/- Further, the funeral expenses and loss of estate of Rs.4300/- granted by the Tribunal is enhanced to Rs.15,000/-

The award dated 11.10.2003 is modified to the extent that a sum of Rs.3,16,500/- awarded by the Tribunal is enhanced to Rs.6,57,200/-.

The claimants would be entitled to the enhanced compensation along with interest @ 7.5% per annum from the date of claim petition till the amount is realised.

The appeal is partly allowed.

(AVNEESH JHINGAN)
JUDGE

11.08.2017

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Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes