

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

327

FAO No.799 of 2002

Decided on : 12.10.2017

Surinder Kaur and others

... Appellants

Versus

Babu Ram and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Vikas Mohan Gupta, Advocate
for the appellants.

Mr.Rajesh K.Sharma Advocate
for New India Assurance Company Limited.

Avneesh Jhingan , J. (Oral)

Present appeal has been filed against the award dated 01.10.2001 passed by the Motor Accidents Claims Tribunal, Rupnagar (for short 'the Tribunal').

2. This was burnt case and has been reconstructed from the salvaged record and copies supplied by counsel subject to all just exceptions.

3. Brief facts relevant for the decision of the present appeal are that on 23.11.1999, Harpal Singh aged 45 years was travelling in a car bearing registration No.CH-01-3144. Near village Bharatgarh, the car was struck by rashly and negligently truck bearing registration No.HP-11/2136. As a result of the accident, Harpal Singh lost his life and Surinder Chaudhary, suffered injuries. FIR No.211 dated 23.11.1999 was registered at Police Station Rupnagar.

4. Claim petition was filed under Section 166 of the Motor

Vehicles Act, 1988 (for short 'the Act).

5. The claim petition was filed by widow, major son and daughter (both unmarried) and minor son. The Tribunal awarded a sum of Rs.6,19,200/- along with interest at the rate of 9 per cent per annum.

6. Aggrieved of the said award, the present appeal has been filed for enhancement of compensation.

7. I have heard learned counsel for the parties and perused the papers book.

8. Learned counsel for the appellants argues that the deceased was 45 years of age. He was working as Inspector in the Food and Supply Department, Punjab and his salary certificate was produced as Ex.P-12. According to Ex.P-12, his basic salary was Rs.6400/- plus DA to the tune of Rs.2368/- and other allowances were also paid. The grievance is that the Tribunal has assessed the dependency as Rs.4300/- per month ignoring the salary certificate. Further grievance is that multiplier of 12 has been wrongly applied when the deceased was 45 years of age.

9. Learned counsel for the appellants contended that no amount has been awarded under the conventional heads. It is argued that the deceased was a government servant and therefore, future prospects should have been awarded. Learned counsel further argued that the Tribunal has wrongly deducted 1/3rd for self expenses.

10. Learned counsel for the respondents defended the award and argued that if the entire salary is to be accepted then income tax has to be deducted. Further, he contended that in the present case son and daughter were major, therefore, deduction of 1/3rd for self expenses has rightly

been made.

11. The contention raised by learned counsel for the appellants deserves acceptance. Ex.P-12 has not been disputed either before the Tribunal or in this Court. As per Ex.P-12 (last pay certificate), the deceased was drawing his basic salary plus D.A. totaling to Rs.8768/- plus other allowances.

12. Since the record of the case was burnt, it would not be possible to exactly calculate the income tax, if applicable on the salary of the deceased. It may be further noted that salary includes other allowance also for the present purposes only, basic salary and DA is being considered.

13 The contention of the learned counsel for the appellants that 1/4th deduction for self expenses should have been made, also deserves acceptance. It has come on record that both daughter and son were unmarried and it has not been proved that they were earning of their own. In such circumstances, they would be dependent upon their father.

14. The Hon'ble Apex Court in case Sarla Verma & Ors Vs. Delhi Transport Corp.& Anr, 2009(3) RCR (Civil), 77 held that if dependents are 4 to 6 in number, then the 1/4th deduction for self expenses has to be made.

15. The contention of learned counsel for the appellants regarding future prospects is also covered by the decision of the Hon'ble Apex court in Sarla Verma's case (supra). In case of 45 years old, 30% future prospects has to be added. The dependency compensation is recalculated as below:-

16. Basic salary (Rs.6400 + Rs.2368/- DA) totaling to Rs.8768, the same is rounded of Rs.8800/-. Rs.8800 X 12= Rs.105600/- minus $\frac{1}{4}$ th deduction for self expenses (26400)= Rs.79200 applying multiplier of 14= Rs.11,08800 + 30% future prospects (Rs.33,2640) = Rs.1441440/-

17. The contention of learned counsel for the appellant with regard to awarding of compensation under conventional heads also deserve acceptance.

18. Hon'ble the Apex Court in ***Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767***, held 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.*****

*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.

The Hon'ble 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.

19. 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.”

20 A perusal of the above decisions shows that the compensation under the heads mentioned therein is to be awarded and further need to be increased from time to time.

21. As per the decision referred and keeping in view the facts and circumstances of the case compensation under conventional heads is awarded as per table below:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount now awarded</i>
1	Loss of dependency	6,19,200	14,41,400
2	Funeral expenses	nil	25000
3	Loss of consortium	nil	25000
4	Loss of love and affection	nil	1,00,000
5	Loss of estate	nil	25000
	Total	6,19,200	16,16,400

23. The award dated 01.10.2001 is modified to the extent that amount of Rs. 6,19,200/- awarded by the Tribunal is enhanced to Rs.16,16,400/-. The claimants shall be entitled to the enhanced amount along with interest at the rate of 6% from the date of filing the claim petition till its realization.

24. The appeal is partly allowed in the aforesaid terms.

[Avneesh Jhingan]
Judge

12.10.2017
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No