

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

FAO No. 1675 of 2004

DATE OF DECISION : 12.09.2017

Sohni Devi and others

.... APPELLANTS

Versus

Karnail Singh and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Satbir Gill, Advocate,
for the appellants.

Mr. Rohit Goswami, Advocate, for
Mr. D.P. Gupta, Advocate,
for respondent No.2.

* * *

AVNEESH JHINGAN, J. (Oral)

The present appeal is against the award dated 17.07.2003 passed by the Motor Accident Claims Tribunal, Sirsa (for short 'the Tribunal').

2. On 30.08.2002, Ballu Ram lost his life in an accident with truck bearing registration No. RJ-31 G/0537 (for short 'the offending vehicle'). The said vehicle was being driven rashly and negligently. FIR was lodged in Police station GRP Sirsa.

3. A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the widow and two minor sons of the deceased.

4. The Tribunal, after considering the evidence and witnesses, awarded a sum of ₹ 19,03,577/- along with interest at the rate of 9% per annum.

5. Aggrieved of the said award, the claimants filed the present appeal.

6. During the pendency of the appeal, fire broke out in this court and the appeal file was partially burnt. Subsequently, from the salvaged record of the partially burnt case, the file was reconstructed, subject to all just exceptions and further verification.

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

8. In the present appeal, the facts are not disputed. The only issue raised by the appellants is that the Tribunal has not granted compensation under the conventional heads. Further, learned counsel for the appellants contended that instead of calculating average income of the deceased for the previous years, his highest income from one of the previous year should have been considered.

9. Learned counsel for respondent No.2 argued that the claimants have already been awarded compensation of ₹ 19 lacs odd. The deceased was a mere *Palledar*. In such circumstances, compensation should not be enhanced and no interference is called for.

10. The argument of learned counsel for the appellants that while calculating income of the deceased, out of income for previous years, his

highest income from one of the previous year should have been considered is devoid of any merit. To arrive at just and equitable compensation and in view of the fact that the deceased was drawing salary of just ₹ 7,551/- per month from FCI, as deposed by RW2 Ram Nath, District Manager, FCI Hissar, the Tribunal rightly took average of the gross income of the deceased for the previous years instead of restricting itself to the last years income. This is also important as the deceased had some income apart from salary and this income varied year to year.

11. So far as contention of learned counsel for the appellants that the Tribunal should have awarded compensation under conventional heads is concerned, the same deserves acceptance. 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 Santosh 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.”

Further, following the decision in **Rajesh's case** (supra), 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.*****

As per the above referred decisions of the Hon'ble Apex Court,

the claimants should have been awarded compensation under conventional heads.

12. In the present case, the deceased was survived by a widow and two minor sons. In such circumstances, a sum of ₹ 1,00,000/- is awarded to the appellants for loss of love and affection; ₹ 50,000/- on account of loss of consortium; another sum of ₹ 25,000/- as funeral expenses and for transportation of the body. A sum of ₹ 50,000/- is further awarded to the appellants for loss of guidance to the minor sons of the deceased.

12. In view of the above discussion, the award dated 17.07.2003 is modified to the extent that the compensation of ₹ 19,03,577/- awarded by the Tribunal is enhanced to ₹ 21,28,577/-. The claimants shall be entitled to the enhanced amount of compensation along with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation of the amount.

13. Appeal is partly allowed in the aforesaid terms.

September 12, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes