

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

FAO No.4120 of 2002

Date of Decision.10.07.2017

Gaura Devi and others

.....Appellants

Vs

Madan Mohan and others

.....Respondents

Present: None.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal is for enhancement of compensation for death of a person aged 42 years in a motor accident that took place on 12.1.1999. The claimants are widow and two sons.

The deceased was going on foot when he was crushed to death by a maruti esteem car bearing registration No.PB-06B-0380. He was stated to be working as Mason and earning ₹3000/- per month. The Tribunal while assessing the compensation took the income of the deceased as ₹2500/- per month, deducted 1/3rd of the same for personal expenses, applied a multiplier of 15 to assess the loss of dependency at ₹3,00,000/-. It provided a further sum of ₹5000/- towards loss of consortium and ₹2000/- for funeral expenses to determine a total compensation of ₹3,07,000/-. However, the Tribunal held the deceased also negligent and assessed the contributory negligence to the extent of 50% to slice the compensation payable to the tune of ₹1,53,500/- with interest.

There is no representation for the parties, however, in the grounds of appeal it is contended that the Tribunal has totally erred in holding the deceased to be equally negligent. It was the fault of the driver,

who was driving the vehicle rashly and negligently. The owner and driver did not even stand in the witness box to corroborate the plea of contributory negligence.

The Tribunal wrongly assessed the income of the deceased at ₹2500/- per month as a skilled labourer when it was specifically stated by the PW1 Gauri Devi, wife of the deceased that the deceased was earning ₹3000/- per month, which fact was corroborated by the testimony of PW2 Phulla Singh, who stated that the deceased was Mason by profession and used to earn ₹100/- per day. Moreover, the Tribunal did not provide for prospect of future increase, loss of love and affection and loss to estate, thus, there is scope for enhancement.

I have appraised the paper book and of the view that there is scope for enhancement in view of the law laid down by Hon'ble Supreme Court in **Sarla Verma Vs. DTC 2009(6) SCC 121** and **Rajesh v. Rajbir Singh, (2013) 9 SCC 54.** I will take the income of the deceased as ₹3000/- per month, make a deduction of 1/3rd for personal expenses and adopt a multiplier of 14 suitable to the age of the deceased. I will also provide ₹1,00,000/- towards loss of consortium, ₹1,00,000/- towards loss of love and affection, ₹5000/- towards loss to estate and ₹5000/- for funeral expenses.

However, as regards the increase in income as future prospects, the Hon'le Supreme Court in the ratio decidendi culled out in the judgment rendered in **Chikkamma and another Vs. Parvathama and another** passed in Civil Appeal No.3409 of 2017 decided on 28.02.2017 has refused to grant claim for future prospects with regard to self employed person, owing to the fact that the issue with regard to award of future prospects of a self-

employed person is pending before a larger Bench of Hon'ble Supreme Court. The relevant paragraph 9 of the same reads as under:-

“9. Taking into account the fact that the deceased was a self employed person and also as the question with regard to award of future prospects of a self employed person is presently pending before a larger Bench of this Court and as some enhancement of compensation ha already been made by us, we are of the view that in the facts of the present case, the claim for future prospects ought not to be gone into by us. The said claim, therefore, is refused.

In view of the ratio decidendi culled out by Hon'ble Supreme Court in **Chikkama's case** (supra), I will constrain myself to award any amount for future prospects at this stage, for, the aforementioned issue is pending adjudication before the larger Bench of Hon'ble Supreme Court. The other heads of claim are tabulated as under:-

FATAL ACCIDENT			
Age	42 years		
Occupation	Mason		
Claimants	Widow and two minor sons		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Income	2500	3000
2	Add, % of increase 30%	--	--
3	Less, Deduction 1/3 rd	1667	2000
4	Multiplicand (annualized by multiplying 12)		24,000
5	Multiplier	15	14
6	Loss of dependence		3,36,000
7	Medical Expenses & Transportation		--
8	Loss of Consortium	5000	1,00,000
9	Loss of love and affection		1,00,000
10	Loss to estate		5000
11	Funeral expenses	2000	25000
	Total	3,07,000	5,66,000

The total compensation assessed is ₹5,66,000/-.

As regards the issue of contributory negligence, I am in consonance with the finding rendered by the Tribunal attributing 50% contributory negligence to the deceased, for, a pedestrian ought to be careful while crossing the GT road where vehicles run at a higher speed than normal. Therefore, the amount of compensation payable shall be ₹ 2,83,000/-. The amount in excess over what has already been provided by the Tribunal i.e. ₹1,53,500/-, shall also attract interest @6% from the date of filing of the appeal till the date of realization. The amount aforementioned shall be paid by the insurance company as held by the Tribunal.

The award is modified and the appeal is allowed to the above extent. Registry is directed to send a copy of this judgment to the appellants and to the insurance company on the addresses given in the appeal for compliance.

(AMIT RAWAL)
JUDGE

July 10, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No