

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

(1)

FAO No. 2839 of 2004

Ishrana and another

.... APPELLANTS

Versus

Shamsher Singh Saini and others

.... RESPONDENTS

(2)

FAO No. 5375 of 2004

Afsana and others

.... APPELLANTS

Versus

Shamsher Singh Saini and others

.... RESPONDENTS

DATE OF DECISION : 25.10.2017

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Madan Pal, Advocate,
for the appellants.

Mr. Neeraj Khanna, Advocate,
for respondent No.3 - Insurance Company.

* * *

AVNEESH JHINGAN, J. (Oral)

The present appeals have been filed against the award dated 07.11.2003 passed by the Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal'), whereby MACT case Nos. 47 and 48 of 2003 relating to the

same accident were disposed of together.

The files of these appeals were burnt and from the salvaged record of the partially burnt cases, the same were reconstructed subject to all just exceptions and further verification.

On 05.07.2001, Afsar Ali aged 30 years was driving a motor cycle and Kabil was a pillion rider. When they reached near Ramba crossing, their motor cycle was hit by a rashly and negligently driven car bearing registration No. PB-10AB-5351. As a result of the accident, Afsar Ali suffered multiple injuries and lost his life. Kabil was also injured in the said accident.

Two separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') were filed by the legal representatives of deceased Afsar Ali and injured Kabil.

The Tribunal, after considering the evidence and witnesses, awarded a sum of ₹ 2,11,200/- to the legal representatives of deceased Afsar Ali along with interest at the rate of 9% per annum. In the claim petition filed by injured Kabil, a sum of ₹ 46,700/- was awarded along with interest at the rate of 9% per annum.

FAO No. 2839 of 2004

This appeal has been filed by the legal representatives of deceased Afsar Ali for enhancement of the compensation.

I have heard learned counsel for the parties and perused the paper-book.

Learned counsel for the appellants argued that the deceased was

30 years of age at the time of the accident and the Tribunal has wrongly applied the multiplier of 11. He further argued that no amount has been awarded under the conventional heads.

Learned counsel for respondent No.3 – Insurance Company vehemently opposed the enhancement of compensation. He submitted that the income assessed by the Tribunal is already on the higher side, therefore, the multiplier of 11 is justified and no other amount should be awarded under the conventional heads.

The contentions raised by learned counsel for the appellants deserve acceptance. The Tribunal assessed the monthly income of the deceased as ₹ 2,400/- and after deducting 1/3rd on account of his self expenses, the annual dependency has been arrived at ₹ 19,200/- (1600 x 12). By applying the multiplier of 11, loss of dependency has been calculated as $19200 \times 11 = ₹ 2,11,200/-$. Though the income assessed and the deduction made on account of self expenses have not been disputed, yet it has been submitted that keeping in view the age of the deceased, the multiplier of 11 was wrongly applied.

The issue of multiplier has been decided by the Hon'ble Apex Court in *Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121*, wherein it has been held that in case of death of 30 years old person, loss of dependency would be calculated by applying the multiplier of 17.

In view of the said decision, applying the multiplier of 17, compensation on account of loss of dependency is re-calculated as $19200 \times 17 = ₹ 3,26,400/-$.

With regard to the awarding of compensation under the conventional heads, the Hon'ble 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. 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 ₹ 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.*

A perusal of the above decision shows that Hon'ble the Apex Court has enhanced the compensation awarded by the High Court under the Heads of 'loss of estate', 'funeral expenses' and 'loss of consortium' and also awarded compensation under the head of 'loss of love, care and guidance of the minor children'.

The deceased in this case was 30 years of age at the time of the accident. He was survived by the widow and old mother. The entire family had suffered because of untimely death of Afsar Ali. The wife had lost her companion, mother has lost her young son and the family has lost a bread earner.

Keeping in view the law laid down by the Hon'ble Apex Court and the facts mentioned above, the claimants are awarded compensation under the conventional heads.

The net effect is that the compensation under conventional heads is granted and the amount awarded by the Tribunal for loss of dependency is enhanced as per the following table :

Head	Awarded by the Tribunal	Awarded now by this court
Loss of dependency	₹ 2,11,200/-	₹ 3,26,400/-
Loss of consortium	-	₹ 50,000/-
Loss of love and affection	-	₹ 50,000/-
Loss of estate	-	₹ 25,000/-
Funeral expenses	-	₹ 25,000/-
Total	₹ 2,11,200/-	₹ 4,76,400/-

In view of the above, the award dated 07.11.2003 is modified to the extent that the amount of ₹ 2,11,200/- awarded by the Tribunal is enhanced to ₹ 4,76,400/-.

The appellants 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.

FAO No. 5375 of 2004

This appeal has been filed by the legal representatives of Kabil for enhancement of the compensation.

I have heard learned counsel for the parties and perused the paper-book.

Learned counsel for the appellants argued that Dr. Vijay Gupta deposed before the Tribunal that Kabil suffered quadriplegia with fracture

dislocation survival six over survival seven. He was hospitalised for more than three months. Learned counsel further argued that during the pendency of the claim petition, Kabil lost his life because of the injuries suffered in the accident occurred on 5.7.2001. He has been awarded compensation only for medical expenses, and no amount has been awarded for pecuniary and non-pecuniary damages on account of the injuries suffered in the accident.

Learned counsel for respondent No.3 – Insurance Company argued that the appellants have failed to prove that Kabil died because of the injuries suffered in the accident. He contended that no enhancement of compensation is required.

The contentions raised by learned counsel for the appellants deserve acceptance. Though it may not have been proved that the injuries suffered by Kabil in the accident proved fatal, but it has not been disputed that the injured remained hospitalised for more than three months and suffered fracture affecting his survival six and seven. In such circumstances, apart from awarding compensation for medical expenses, the Tribunal should have considered the awarding of compensation under various heads for pecuniary and non-pecuniary damages.

Hon'ble the Apex Court in ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another***, 2013(12)SCC 455, held as under:

"It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and

miscellaneous expenditure.

(ii) Loss of earnings (and other gains), which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

A perusal of the above decisions shows that in case of personal injury pecuniary damages (special damages) should be given under various heads. It was further held that non-pecuniary damages should also be compensated.

Since in the present case, the injured died during the pendency

of the claim petition, therefore, it is deemed appropriate that keeping in view the suffering and hospitalisation of the injured and considering the fact that ultimately, the accident resulted in shortening of his life expectancy, instead of awarding amounts under various heads, a consolidated sum of ₹ 2.00 lacs is awarded to the claimants.

In view of the above, the award dated 07.11.2003 is modified to the extent that the appellants are awarded a sum of ₹ 2.00 lacs, over and above the amount already awarded by the Tribunal.

Appellants 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.

Appeals are partly allowed, in the aforesaid terms.

October 25, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes