IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1035-2005 (O&M)
Date of decision:- 25.07.2017

Charno Devi and others

....Appellants

Versus

Surinder Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vijay Lath, Advocate
for the appellants.

Ms. Suman Jain, Advocate
for respondent No.3-Insurance Company.

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RITU BAHRI J. (Oral)

CM-4138-CII-2005

Heard.

For the reasons mentioned therein, the application is allowed. Delay of 29 days in filing the appeal is condoned.

FAO-1035-2005

Present appeal has been preferred by the claimants-appellants (for short 'the appellant'), seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Rupnagar (for short, 'the Tribunal') to the tune of ₹2,90,000/-, vide impugned Award dated 03.09.2004.

FACTS NOT IN DISPUTE

On 23.10.2001, Lachhman Dass (since deceased) was going on his tractor No.PB-12-G-3870 from the side of village Simaru towards Hoshiarpur side. One Raj Kumar son of Bakhtaura Ram was coming behind the said tractor of deceased on tractor No.HR-01-E-8474. When tractor of deceased near village Singh Bhagwantpur on Kurali-Ropar road, one canter bearing No.PAT-4643, which was being driven by respondent No.1. in rash and negligent manner came from the opposite direction and immediately the said canter struck against tractor of Lachhman Dass. Due to this impact, Lachhman Dass fell from his tractor and died at the spot. FIR No.186 dated 23.10.2001 was also registered in Police Station Sadar Ropar.

Consequently, the claimants-appellants had filed a claim petition before the Tribunal.

Before the Tribunal, on the basis of the evidence led by the parties, the Tribunal has came to a conclusion that the accident in question was occurred due to the rash and negligent driving by respondent No.1. The Tribunal has taken the income of deceased as ₹3,000/- per month and annual income comes to ₹36,000. Out of which, 1/3rd amount was deducted towards personal expenses. The dependency of the claimants, thus, came to ₹24,000/- per annum. Lachhman Singh (deceased) was 45 years of age, the multiplier of '12' was applied. Thus, the claimants were found entitled to compensation of ₹2,88,000/-. In addition to it, funeral expenses was awarded as ₹2,000. Hence, the claimants-appellants were found entitled to total compensation of ₹2,90,000/- along with interest at the rate of 9% per annum from the date of filing of the petition till its deposit with the Tribunal.

Feeling dissatisfied with the aforesaid Award, the present appellants have preferred the present appeal.

Respondent No.1 has not served till date in the present case.

Keeping in view the fact that the liability to pay the compensation to the legal heirs of the deceased has been fastened jointly and severally upon Insurance Company as well as on driver, therefore, service of respondent No.1 is dispensed with.

Learned counsel for the appellants contends that the Tribunal has erred in awarding the compensation, in view of the judgment of **'Sarla Verma and others *vs.* Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77', 'Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54' and 'Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent Apex Judgments 459', Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520 and Kalpanaraj and others vs. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193.** Moreover, the Tribunal has also not granted the benefit of future prospects while determining the compensation amount.

On the other hand, the learned counsel for respondent No.3-Insurance Company has vehemently opposed the present appeal and argued that the matter with regard to payment of future prospects is pending consideration before a Larger Bench of Hon'ble the Supreme Court in **National Insurance Co.** Vs. **Pushpa and others, 2015(9) SCC 166.**

I have heard learned counsel for the parties and perused the record.

No doubt, the question for grant of future prospects in case of a daily wager is pending before a Larger Bench of Hon'ble the Supreme Court but there was no stay to grant future prospects till the finalization of the matter.

In **Rajesh's Kumar case (supra)** Hon'ble the Supreme Court while referring to the judgment of Hon'ble the Supreme Court of India in a case of **Santosh Devi Vs. Union of India and others, 2016(3) S.C.T 102** had explained in detail with regard to the self employed who get fixed income. It has been held that it cannot be denied that there has been incremental enhancement in the income of those who are self employed and even those engaged on daily basis, monthly basis or even seasonal basis. With a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. An example of tailor was given who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essential go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour like barber, blacksmith, cobbler, mason etc. In para 11 and 12, it has been observed as under:-

> "11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition

> should be 30% in case the deceased was in the age group of 40 to 50 years.
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> 12. In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

In **Pushpa's case (supra)**, Hon'ble the Supreme Court was dealing with a case of 30 year old whose income was taken to be ₹13,300/- per month and thereafter, 30% future prospects were given to him, as per judgment of **Santosh Devi.** In this judgment, the Tribunal awarded a sum of ₹27,35,744/- and Hon'ble the Supreme Court directed the Insurance Company to deposit ₹20,00,000/- before the Tribunal within four weeks and the Tribunal was directed to distribute it proportionately as per the directions given in its award and the rest of the award amount was stayed. Thereafter, the matter was referred to a Larger Bench.

This Court while dealing with a case of daily wager in **FAO-3743-2016** titled **Santosh** Vs. **Kailash Chand and others**, **decided on 14.07.2017**, has recorded the detailed reasons to grant the future prospects for determining the compensation amount where income is taken at less than ₹10,000/- per month, keeping in view the high rise price in today's time.

The present case is of an agriculturist and there is no question for getting any increment, however, the benefit of future prospects cannot be denied as the deceased was maintaining his wife, children and mother and was facing the high rise price in the society.

Therefore, taking into consideration the above-mentioned judgments**,** the compensation is re-assessed as under:-

Sr. No.	***Heads***	***Calculations***
(i)	Salary	₹3,000/- per month
(ii)	30% of (i) above to be added as future prospects	₹3000 + ₹900 = ₹3900/- per month
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	₹3900 - ₹1300 = ₹2,600 per month
(iv)	Compensation after multiplier of '13'	₹2600 x 12 x 13 = ₹4,05,600/-
(v)	Loss of consortium	₹1,00,000/-
(vi)	Loss of love and affection to son	₹1,00,000/-
(vii)	Loss of love and affection to mother	₹50,000/-
(viii)	Funeral charges	₹25,000/-
	Total compensation awarded	₹6,80,600/-
	Enhanced amount of compensation	₹6,80,600 - ₹2,90,000 = ₹3,90,600/-

The enhanced amount of compensation of ₹3,90,600/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Kumari Kiran through her father Harinarayan Vs. Sajjan Singh and others, 2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

July 25, 2017 **(RITU BAHRI)**
naresh.k **JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	No