

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4286 of 2005 (O&M)
Date of Decision: 27.9.2017

Surinder Kaur and others

... Appellants

Versus

M/s Shivalik Agro Agencies and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Arvind Mittal, Advocate,
for the appellants.

Mr. V.K. Garg, Advocate,
for respondent No.3.

RAJIV NARAIN RAINA, J.

1. This is an appeal by claimants for enhancement of compensation in a case of death of a 32 year old accident victim who died due to injury sustained in the motor accident. The award dated May 04, 2000 passed by the learned Motor Accident Claims Tribunal, Rupnagar is assailed on the ground that it give inadequate compensation. The Tribunal had applied the multiplier of 12 in assessing dependency of the claimants. Deceased Major Singh was working as a driver in Doha, Qatar since 1985. He maintained an NRI bank account in Khanna, Panjab in Canara Bank. Kalyan Singh, Clerk in Canara Bank, Khanna, District Ludhiana while appearing as PW-2 deposed that late Major Singh had remitted from time to

time an amount totalling ₹5,52,600/- in his account for the period January 31, 1994 to March 16, 1998. This means that he must have kept a substantial amount to maintain himself in an expensive country. These amounts were deposited in the shape of FDRs.

2. Late Major Singh's wife Surinder Kaur appeared in the witness box as PW-3 and deposed that he worked as a driver in Doha Qatar and held a driving licence Ex.P-10. She produced his identity card Ex.P-11. She deposed that her husband was earning ₹20,000/- per month of which he sent half the amount to meet household expenses and the remaining amount he remitted to his bank account as an investment for the future.

3. The death occurred on September 14, 1998 when he was on India visit to his village. Since the salary certificate was not produced on record showing actual income of the deceased the learned Tribunal arbitrarily assessed the monthly income at ₹2,000/- annualized to ₹24,000/- per year applied multiplier of 12 to compute the future dependency. This figure, to my mind, is an extremely conservative thinking of the learned Tribunal at Rupnagar. The Tribunal did not deal with the manifestations of the amount of ₹5,52,600/- remitted and spread over a period of 48 months and credited to his NRI account maintained in Canara Bank in Khanna, then it can safely be assumed that the monthly income of the deceased was at least ₹11,052/-.

4. The Tribunal I believe has completely ignored this vital clue of income and restricted the claim only due to production of salary statement. The source of income matters little in a case of victim compensation based on tortious liability under the Motor Vehicles Act, 1988 so long as

substantial money has found its way in an Indian Bank in Khanna in his account and duly proved by witnesses summoned from the Bank to testify on the bank statement of the deceased.

5. I asked the counsel for the respective parties to produce a detailed chart of calculations regarding compensation as what was proposed, accepted or disputed by the parties for the assistance of the Court.

6. Learned counsel have supplied their respective calculations which are taken on record as Mark 'A' and Mark 'B'. The areas of convergence are that monthly income must suffer 1/3rd deduction. Both the parties are agreed that the multiplier of 16 instead of 12 should have been applied by the Tribunal; given the age of the deceased was 32 at the time of death. Both sides have agreed that future prospects deserve to be calculated at 50% of the monthly income as per the Supreme Court judgment in Rajesh and others v. Rajbir and others, (2013) 9 SCC 54 which ruling holds that 50% future prospects is to be added when the deceased is in the age group of 30 to 40. Loss of consortium is agreed to by both sides as due and payable in terms of *Rajesh* case. Respondents agree with the payment for loss of guidance, love and affection should bring ₹1 lakh each to the claimants as per *Rajesh* case. They also agree that loss of estate should bring ₹50,000/- and funeral expenses ₹25,000/- instead of ₹5,000/- as awarded by the Tribunal.

7. The only serious area of divergence raised by the insurer is as to the income with respondents asserting that since no proof of income is forthcoming by way of legal evidence the amount deserves to be reduced significantly. I have already discussed this issue as above and hold that the

monthly income in this case should be assessed as ₹11,052/- as per bank record which is the best dependable evidence of the power of savings of the deceased over a substantial period of time and eminently qualifies as income.

8. The respondents objects that loss of consortium, loss of guidance, love and affection to minors and funeral expenses should be assessed as per the price Index in 1998 and loss of estate should be restricted to ₹5000/-.

9. The objection as to future prospects is agreed to at the rate of 50% of the monthly income although monthly income was disputed in this case but this amount has to be kept on hold since the issue is pending in the Supreme Court in SLP No.8058 of 2014, National Insurance Company Ltd. v. Pushpa and others & SLP (C) No.5587 of 2016, Chikkamma and another v. Parvathamma and another.

10. I have considered the objections of the respondents and the claims of the appellants.

11. I do not agree with the contention that compensation under the above heads of payment should be restricted as per price Index in 1998 or even the funeral expenses have to be paid at that level due to pendency of litigation and the amount which must already have been spent in litigation by the claimants pursuing their legal remedy. These are the deserving enhancements flowing as a natural consequence of litigation pending in appeal and the claimants entitled to increase as per the law stated by the Supreme Court. The family has been denied of its rights over a long period of time which goes back almost 19 years waiting for their compensation

and/or enhanced compensation.

12. Therefore, the claim in the chart of the appellants is accepted as awardable amounts. It can also not be said in the facts and circumstances of this case that while late Major Singh was working as a driver in Doha, Qatar he cannot be assumed to be self-employed person in a foreign land where companies in the Gulf require manpower and I would assume that the victim was a salaried person and, therefore, I do not think it would be justified to keep compensation for future prospects suspended during the pendency of the case before the Supreme Court which is regarding self-employed persons.

13. The very fact that late Major Singh was employed in a foreign land from 1985 to 1998 for 13 years is a material circumstance which persuades me to hold that he was salaried even though his salary certificate, if any, was not produced nor could be by a poor widow living in a village at Khanna to have access to information which may not have been shared by the deceased by remitting documents.

14. Late Major Singh may not have even liked to share the nitty gritty of his income with his rural family or to have set them evidence in advance anticipating sudden death in a motor accident. The very fact that Major Singh could make it to a foreign country in 1985 is enough to say that he had a stable career ahead of him to help him improve the standards of his family in a village in Khanna in the future.

15. The family have suffered irretrievably and lost its breadearner at a young age leaving behind the wife and minor children and their career and future prospects are also at stake and may be seriously jeopardized forever.

This loss too has to be compensated in terms of money. The right to adequate and reasonable compensation is a right to life and liberty and cannot be postponed to future events, when there is sufficient legal justification today in modifying the award of the Tribunal increasing the amounts as above by allowing the appeal to the extent granted in this order.

16. Accordingly, the appeal is allowed and the impugned award stands modified as per chart below:-

Accident- 14.9.1998		
Age- 32		
Claimants - widow, 2 Minor Children		
Heads of Claim	Tribunal Amount (Rs)	High Court Amount (Rs)
1. Income	2,000	11,052
2. Add, % of increase 50% (11,052 + 50% of 11,052)		16,578
3. Deduction 1/3		11,052
4. Multiplicand (11,052 x 12)	24,000	1,32,624
5. Multiplier (1,32,624 x 16)	12	16
6. Loss of Dependence	2,88,000	21,21,984
7. Medical Expenses		
8. Loss of Consortium		1,00,000
9.Loss of love and affection (1,00,000 to each minor)		2,00,000
10. Loss of estate		50,000
11. Funeral expenses	5,000	25,000
Total	2,93,000	24,96,984

17. The Compensation shall be Rs. 24,96,984 /- and the additional amount of what was awarded already by the Tribunal will attract interest at 7.5 % from the date of petition till date of payment and not 12% as awarded by the Tribunal which is on the much higher side. The total amount be calculated and deposited before the Executing Court/Tribunal within two months from the date of communication of this order and the same be

disbursed to the claimants without delay.

(RAJIV NARAIN RAINA)
JUDGE

27.9.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>