

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3512 of 2006

Date of Decision: 15.03.2017

Sauran Ram

...Appellant

Vs.

Dara Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Neeraj Khanna, Advocate,
for the appellant.

Ms. Atanjeet Kaur, Advocate
for Mr. Vibhav Jain, Advocate,
for respondent no.2.

Amol Rattan Singh, J.

By this appeal, the appellant seeks enhancement of the compensation awarded to him, of an amount of Rs.1,15,200/- alongwith 6% interest thereupon, per annum, for the unfortunate death of his 28 year old son, who died in a motor vehicle accident on 17.12.2002, near the bus-stand of village Laha, Police Station Naraingarh, District Ambala.

2. The facts, as given in the impugned Award and the claim petition filed, are that deceased Suresh Kumar was standing on the '*katcha*' berm besides the road near the aforesaid bus-stand, at 5:30 pm, when a truck bearing registration no.CH-01-M-9851, stated to be driven by respondent no.1 herein, came from the side of village Laha at a very fast speed and hit him. Suresh Kumar is stated to have died on the spot itself.

It was contended that the accident occurred entirely due to the

rash and negligent driving of the aforesaid truck by respondent no.1, Dara Singh. An FIR bearing no.210 was also registered on 17.12.2002 itself, at Police Station Naraingarh, for the alleged commission of offences punishable under Sections 279 and 304-A of the IPC.

As per the claim petition, respondent no.1 is stated to have run away from the spot.

3. It was further contended that deceased Suresh Kumar was running a dairy firm and also used to work as a labourer, earning Rs.6000/- per month as a sole bread earner of his family and that the appellant-claimant was wholly dependent upon him.

Consequently, Rs.10,00,000/- was claimed by way of compensation.

4. Upon notice issued, respondent no.1 appeared and contested the claim petition but the owner of the aforesaid vehicle, i.e. respondent no.2 herein, refused to appear and was proceeded against *ex parte* by the learned Tribunal.

In his written statement, respondent no.1, other than raising preliminary objections with regard to the claim petition not being maintainable, suppression of facts and the claimant not having come to the Tribunal with clean hands and it being false and frivolous, it was stated on merits that the accident in question had taken place, but not due to the fault of respondent no.1.

As per the said respondent, the deceased himself came in front of the running truck while it was being driven at a normal speed and as such, he, i.e. respondent no.1, had been falsely implicated in the criminal case by the police.

5. On the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

- “1. Whether the accident in question took place due to rash and negligent driving of his vehicle by respondent no.1, as alleged? OPP
2. If issue No.1 is proved, whether Suresh Kumar son of the claimant died in the accident in question? OPP
3. If the above issues are proved, whether the claimant is entitled to compensation, if so to what amount of compensation? OPP
4. Relief.”

6. The petitioner having examined himself and tendered his affidavit, reiterated the facts given in the claim petition and also tendered a copy of the post mortem report of the deceased, as Ex.P1.

One Raghubir Singh deposed as PW2 and tendered his affidavit, testifying that the accident had taken place due to the rash and negligent driving of respondent no.1. This witness also tendered a copy of the FIR registered on his statement, as Ex.P2.

A certified copy of an account certificate also tendered by the claimant as Ex.P3.

7. As per the impugned Award, at the stage of evidence, respondent no.1 also did not step into the witness box and in fact, “walked out of the proceedings on 14.10.2005” and was therefore also proceeded against *ex parte* from that stage.

8. PW2 having testified that he was returning from his duty and was standing on the '*katcha*' berm on 17.12.2002, with Suresh Kumar also standing there and the truck having come and hit him, as described in the claim

petition, the learned Tribunal held that with the aforesaid testimony, with an FIR also registered against the first respondent, with no rebuttal to that evidence, the issue of negligence stood proved against respondent no.1.

It was also noticed that in his testimony, PW2 had stated that he had duly noted the registration number of the offending vehicle, which was given by him (to the police) at the time of registration of the FIR.

9. Having found as above, as regards the compensation payable by the respondents, as regards the income of the deceased, the contention of the claimant (present appellant) was disbelieved, with no evidence led to prove his income and a certificate showing his education to be up to the middle class level only.

Hence, it was held that the deceased was a labourer by profession, earning Rs.2400/- per month. Taking it that a person normally spends 1/3rd of his income on himself, Rs.800/- were deducted from the aforesaid amount, leaving the loss of dependent income of the claimant to be Rs.1600/- per month, or Rs.19,200/- per annum. It was further held that though the deceased was unmarried, had he remained alive he would have got married and having a separate family, his liability towards his father would have decreased. Yet, it was further held that the father, being a legal heir and otherwise dependent on the deceased, he was the only person towards whom he could look to for psychological and financial help during his old age. The appellant-claimants' age was found to be 65 years.

As regards the age of the deceased, though in the petition it was given as 28 years, in the post mortem report, it was found to be stated to be 27 years.

Keeping in view the age of the deceased, and that of the present

appellant, a multiplier of 6 was applied to the aforesaid annual income and the loss of income to the present appellant-claimant was therefore calculated as Rs.1,15,200/-.

Respondent no.2, Shyam Bansal, having been found to be the owner of the truck with which the accident had occurred, he was held to be liable to pay the compensation, he being the employer of respondent no.1.

10. Thus, a total compensation of Rs.1,15,200/- alongwith interest @ 6% per annum thereupon, running from the date of the filing of the petition till realization of the amount, was awarded as compensation to the present appellant-claimant, vide the impugned Award.

11. Before this Court, Mr. Neeraj Khanna, learned counsel for the appellant, submitted that the income of the deceased was wrongly assessed and was highly inadequate and further, a multiplier of at least 17 should have been applied, the deceased found to be about 27-28 years of age.

He further submitted that no loss of future prospects of income have been awarded by the Tribunal and yet further, no amount has been awarded towards the funeral expenses to the deceased, and for the loss of love and affection of the appellants' son.

Learned counsel, therefore, prayed that the compensation be enhanced accordingly.

12. Ms. Atanjeet Kaur, learned counsel for respondent no.2, on query could not deny that no appeal had been filed by the said respondent against any finding of the learned Tribunal. She also could not deny that as per the judgment in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, where the deceased was 26 to 30 years of age, a multiplier of 17 should be applied.

13. Having considered the aforesaid short arguments, as also the impugned Award, the first thing that needs to be noticed is that the claim petition and this appeal have been filed by the father of the deceased, who, usually even as per the observation made in *Sarla Verma's* case (supra), would not be entitled to compensation for loss of income of his son, as a father would not be normally considered to be dependent on his sons' income. Yet, it is also to be seen that in the present case no appeal has been filed by the respondents to refute the finding of the Tribunal accepting the age of the appellant to be 65 years. It is seen that there is no discussion at all with regard to the age of the appellant, other than noticing that he stated that he was 65 years old. That statement not having been challenged either before the Tribunal or before this Court, I see no reason to hold otherwise than the fact that the appellant was 65 years old, at least at the time of his deposition before the Tribunal. It is seen from the record of the Tribunal, that the present appellant deposed before that Court on 30.08.2005, i.e. about 2 years and 8 months after the date of the accident and as such, at the time of the accident also, he was about 62 years of age, accepting his statement with regard to his age, with no rebuttal thereto, as already said.

That being so, and admittedly the deceased having been found to be a labourer, I see no reason to hold that the appellant was not dependent on the income of his son, at the age of 62 years and therefore would have continued to be dependent on his income, had he remained alive.

14. However, it is further to be seen that even accepting that fact, the Tribunal has not erred in holding that had the deceased remained alive, he would have probably got married and as such, the contribution by him to his father would have decreased.

Other than the above, even as per the ratio of *Sarla Vermas'* case, in the case of a bachelor, 50% is to be deducted from his income, towards his personal living expenses, whereas the Tribunal in this case had deducted only 1/3rd.

Consequently, as regards the amount to be deducted towards the personal expenses of the deceased, from his assessed income, the loss of dependency per month, to the appellant-claimant, would be Rs.1200/-, that being half the assessed income of Rs.2400/- per month. The annual loss of income would therefore be Rs.14,400/-.

15. Coming to the multiplier to be applied, I agree with learned counsel for the appellant that it would be the age of the deceased and not the age of the claimant that is to be seen, as is now settled after the judgments in **Reshma Kumari v. Madan Mohan and another** (2013) 9 SCC 65 and **Munna Lal Jain v. Vipin Kumar Sharma** (2015) 6 SCC 347. Consequently, the deceased having been accepted to be between 27 to 28 years of age, then as per the ratio of the judgment in *Sarla Vermas'* case (supra), a multiplier of 17 is to be applied to the loss of annual dependent income of the appellant. Hence, to the annual loss of income of Rs.14,400/-, upon applying a multiplier of 17, the loss of dependent income to the appellant works out to Rs.2,44,800/-.

16. However, I do not agree with Mr. Khanna as regards the compensation awarded towards loss of future prospects of an increased income. Though in cases where the deceased was a daily wager, this Court has been directing that the owner/insurance company would calculate the loss of future prospects of income as per the method given in *Sarla Vermas'* case and **Rajesh and others vs. Rajbir Singh and others** (2013) 9 SCC 54, but the

said amount would be got deposited in a fixed deposit by the Tribunal and not disbursed to the claimants till the decision of the Supreme Court in National Insurance Company Ltd. v. Pushpa and others (2015) 9 SCC 166, in this case the yardstick is not being applied, for the reason that normally a father is not held to be dependent upon his sons' income. In the present case, however, this Court has held that he would be entitled to such compensation, due to his, i.e. the appellant fathers', age. The age of the appellant being the yardstick for departure from the norm, therefore, it would also stand to reason that because of the appellants' own age, he being the sole claimant before the Tribunal, he would not be entitled to loss of future prospects of an increased income, even had the deceased been a permanent salaried employee.

Consequently, no compensation is awarded under that head by this Court.

17. Coming to the last argument of learned counsel for the appellant, to the effect that compensation for the loss of love and affection of his son and towards funeral expenses, should be awarded, I agree on that count. Hence, a sum of Rs.50,000/- is awarded towards loss of love and affection of his son to the appellant, even though that would not be a wholly adequate compensation for the loss of a son, but what is conventionally awarded to the parents of an adult son.

As regards the compensation towards funeral and last rites of the deceased, though it is settled that Rs.25,000/- is to be awarded under that head, however, in his claim petition, the appellant himself having stated that he had spent Rs.20,000/- for that purpose, the said amount is awarded to him.

18. Consequently, the following is the compensation now awarded by this Court to the appellant:-

i)	Towards loss of income	Rs.2,44,800/-
ii)	Towards loss of love and affection	Rs.50,000/-
iii)	Towards funeral expenses	Rs.20,000/-
	Total	Rs.3,14,800/-

Thus, the compensation now awarded to the appellant is Rs.1,99,600/- over and above the amount awarded by the Tribunal.

The said enhanced amount would also carry interest @ 6% per annum, running from the date of the filing of the claim petition, till the date of realization thereof.

Both the respondents are held to be jointly and severally liable to pay the compensation.

Costs of Rs.2000/- are also awarded.

March 15, 2017
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(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes