

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

FAO No. 1778 of 2011

DATE OF DECISION : 29.09.2017

Smt. Bachanni Devi and others

.... APPELLANTS

Versus

Jaspal Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ashwani Arora, Advocate,
for the appellants.

None for respondents No.1 and 2.

Mr. R.C. Gupta, Advocate,
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 12.05.2010 passed by the Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar (for short 'the Tribunal') in MACT Case No. 29 of 2005.

On 16.05.2005, Mohinder Pal was going from Pathankot to Mohali in Mohindera Jeep bearing registration No. PB-06-E-2141 (for short 'the offending vehicle'), which was being driven by respondent No.1 in a rash and negligent manner. At about 7.30 AM, when they reached the turn of Gurdwara Teri Sahib, near Balachaur, respondent No.1 lost control over the

offending vehicle and it fell in the canal. Mohinder Pal was taken to Hospital, where he died. He was 44 years of age at the time of the accident.

A claim petition under Section 166 of the Motor Vehicles Act, 1988, was filed by the widow, two minor children and mother of the deceased.

The Tribunal, after considering the evidence and witnesses, awarded a sum of ₹ 9,33,500/- along with interest at the rate of 7.5% per annum, which included ₹ 2,000/- on account of expenses for funeral expenses; ₹ 2,500/- under the head 'loss of estate' and ₹ 5,000/- under the head 'loss of consortium'

Aggrieved of the said award, the present appeal has been filed by the claimants for enhancement of compensation.

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

The facts of the case are not disputed by either of the parties.

Learned counsel for the appellants argued that the deceased was 44 years of age at the time of the accident. He was working as Junior Assistant in Punjab School Education Board, Mohali. Learned counsel further argued that salary of the deceased was ₹ 9,917/- per month. He was survived by a widow, two minor children and old mother. Learned counsel contended that the Tribunal wrongly assessed dependency as ₹ 5,500/- per month. It is argued that the compensation should have been calculated as per decision of the Hon'ble Apex Court in **Sarla Verma and others Versus Delhi Transport Corporation and another**, 2009 (6) SCC 121. Further,

learned counsel contended that the amounts awarded by the Tribunal under the heads of 'funeral expenses'; 'loss of estate' and 'loss of consortium' are on lower side. Even the compensation under the head 'loss of love and affection' has not been awarded by the Tribunal.

Learned counsel for respondent No.3 – Insurance Company defended the award and argued that no enhancement of compensation is called for, although he was not able to pose any serious dispute with regard to the contention of learned counsel for the appellants that the dependency compensation should have been awarded as per the decision of the Hon'ble Apex Court in **Sarla Verma's case** (supra).

So far as the calculation of compensation on account of loss of dependency is concerned, the contention raised by learned counsel for the appellants deserves acceptance, in view of the settled position of law by the Hon'ble Apex Court in **Sarla Verma's case** (supra). Further, with regard to the awarding of compensation under various conventional heads, Hon'ble the 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."

Thereafter, following the decision in **Rajesh's case** (supra), Hon'ble the Apex Court in ***Asha Verma 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. Kunjujamma 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 decisions 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'. Thus, the claimants in this case should have been awarded compensation under conventional heads.

In view of decision of the Hon'ble Apex Court in **Sarla Verma's case** (supra), loss of dependency is re-calculated as under :-

Monthly salary of the deceased	= ₹	9,900/-
Less 1/4 th deduction for self expenses (9900 X 1/4)	= ₹	2,475/-
Monthly dependency (9900 – 2475)	= ₹	7,425/-
Loss of dependency by applying the multiplier of 14 (7425 X 12 X 14)	= ₹	12,47,400/-
Add 30% on account of future prospects as the deceased was a Government employee	= ₹	3,74,220/-
Compensation for loss of dependency 12,47,400 + 3,74,220/-	= ₹	16,21,620/-

The deceased was survived by a widow, two minor children and old mother. Therefore, as per the decisions referred above, the Tribunal should have awarded compensation under the head 'loss of love and affection'. Keeping in view the facts and circumstances of the case, the appellants are awarded a

sum of ₹ 1,00,000/- for loss of love and affection. Further, the compensation awarded by the Tribunal under various other conventional heads is enhanced, as per the table given below :-

<i>Head</i>	<i>Amount awarded by the Tribunal</i>	<i>Now awarded by this court</i>
Loss of dependency	₹ 9,24,000/-	₹ 16,21,620/- (enhanced by ₹ 6,97,620/-)
Funeral expenses	₹ 2,000/-	₹ 20,000/- (enhanced by ₹ 18,000/-)
Loss of estate	₹ 2,500/-	₹ 25,000/- (enhanced by ₹ 22,500/-)
Loss of consortium	₹ 5,000/-	₹ 50,000/- (enhanced by ₹ 45,000/-)
Loss of love and affection	Nil	₹ 1,00,000/- (enhanced by ₹ 1,00,000/-)
Total	₹ 9,33,500/-	₹ 18,16,620/- (enhanced by ₹ 8,83,120/-)

In view of the above, the award dated 12.05.2010 is modified to the extent that the compensation of ₹ 9,33,500/- awarded by the Tribunal is enhanced to ₹ 18,16,620/-.

The appellants - claimants shall be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation of the amount.

The appeal is partly allowed and disposed of accordingly.

September 29, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes