IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 15.9.2017

(1) **F.A.O. No. 1798 of 2011 (O&M)**

Smt. Suresh Devi and others

.......Appellants

Versus

Bijender and others

......Respondents

(2) **F.A.O. No. 2810 of 2011 (O&M)**

Smt. Suresh Devi and others

.......Appellants

Versus

Bijender and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sushil Jain, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for Insurance Company.

AVNEESH JHINGAN, J.

These are two appeals arising out of the same award dated 7.9.2010 passed by the Motor Accidents Claims Tribunal (for short 'the Tribunal'). Since appeals arise out of one award and same accident, these are being disposed of by common order.

F.A.O. No. 1798 of 2011 has been filed by the claimants for enhancement of compensation awarded by the Tribunal.

F.A.O. No. 2810 of 2011 has been filed by the claimants against the dismissal of their claim for damage to the Tempo.

The appeals have been filed by the widow, four minor children and parents of Sanjay (deceased).

The facts in the present appeals are not in dispute.

On 30.7.2008 Sanjay lost his life in an accident which occurred between Tempo bearing registration No.DL-1LJ-1432 and Accent GVS Car bearing registration No. HR-51-P-7275 (for short 'the offending vehicle'). At the time of the accident, Sanjay was driving the Tempo. The offending vehicle was being driven rashly and negligently. Due to the accident, Sanjay sustained multiple injuries and was taken to General Hospital, Sonipat from where he was referred to Trauma Centre, Delhi and on his way he succumbed to injuries. FIR No. 236 dated 31.7.2008 was registered at Police Station Rai.

The Tribunal on the basis of the evidence, awarded an amount of ₹ 5,09,600/- which include ₹ 10,000/- for transportation charges and funeral expenses and ₹ 10,000/- for loss of consortium, along with interest at the rate of 7.5% per annum.

Aggrieved of the said award, the present appeal has been filed.

The only issue raised in this appeal is that compensation awarded by the Tribunal is on lower side and no amount has been awarded under various conventional heads.

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

Learned counsel for the appellants argued that it has come on record that the deceased was owner of Tempo and it was claimed that he was earning ₹ 50,000/- per month. He contended that the Tribunal erred in taking his monthly income as ₹ 3600/-. Learned counsel for the appellants argued that the Tribunal should have awarded the minimum wages of ₹ 6,000/- taking him to be the driver.

Learned counsel for the respondent-Insurance Company argued that no proof of income was led by the claimant, hence, the Tribunal was justified in taking the salary of deceased as ₹ 3600/- per month.

The contention raised by the learned counsel has merit and is accepted. The loss of dependency is calculated taking him as skilled labour and according to minimum wages, his monthly income is fixed as ₹ 4106/- and calculated as under:

Sr. No.	***Description***	***Amount***
1	Annual Income 4106 x12	₹ 49,272/-
2	Multiplier of 16 as age of deceased 30 years 4106 x12x16	₹ 7,88,352/-
3	Less 1/4th deduction of self expenses	₹ 1,97,088/-
4	Dependency loss	₹ 5,91,264/-

Learned counsel for the appellant further argued that only ₹ 10,000/- for funeral expenses and ₹ 10,000/- for loss of consortium, have been awarded by the Tribunal. Same are very merger and other conventional heads have not been considered by the Tribunal.

Learned counsel for the respondent further argued that already ₹ 20,000/- has been awarded and the accident occurred in the year 2008, therefore, no enhancement is called for.

The contention of learned counsel for the appellants deserves acceptance.

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.*
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> *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 decision shows that Hon'ble the Apex Court has enhanced the compensation awarded by the High Court under the Heads-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.

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 Santhosh 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."

A perusal of the above decisions shows that the compensation under the heads mentioned therein is to be awarded.

The Tribunal should have considered and awarded the compensation under the conventional head and the amounts already awarded are enhanced to the extent as follows:

Sr. No.	*Description*	*Amount earlier awarded by Tribunal*	*Amount now awarded*
1	Loss of Dependency	₹ 4,89,600/-	₹ 5,91,264/-
2	Funeral expenses and transportation on death	₹ 10,000/-	₹25,000/-
3	Loss of Consortium	₹10,000/-	₹ 75,000/-
4	Loss of love and affection	Not awarded	₹1,00,000/-
5	Expenses for transportation on death	Not awarded	₹ 5000/-
	Total	₹ 5,09,600/-	₹ 7,96,264/-

The award dated 7.9.2010 is modified to the extent that the amount of ₹ 5,09,600/- awarded by the Tribunal is enhanced to ₹ 7,96,264/-.

The claimants shall be entitled to enhanced compensation alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

In FAO No. 2810 of 2011, learned counsel for the appellants argued that the Tempo was badly damages and claimants had to spent ₹ 2,28,500/- for its repair and the Tribunal erred in not awarding the said amount.

Learned counsel for the respondent argued that neither any bill, witness nor any material was produced before the Tribunal in support of the claim. It was further argued that there is possibility that the said Tempo itself was insured and claimants have claimed the amount from the Insurance Company of the Tempo.

There is no iota of evidence to support the claim. Further it cannot be ruled out that the claimants have already been compensated for the said Tempo by the Insurer of the Tempo and the original bills might have been submitted there. The appeal claiming compensation for repair of Tempo is dismissed.

The net result is that F.A.O. No 1798 of 2011 is partly allowed. F.A.O. No. 2810 of 2011 is dismissed.

(AVNEESH JHINGAN)
JUDGE

15.09.2017
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Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No