

**204-A IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.5320 of 2012 (O&M)
Date of decision: October 26, 2017

Shanti and others

....Appellants

Versus

Jagdish and others

....Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Shalender Mohan, Advocate
for the appellants.

Mr. Sanjiv Pabbi, Advocate
for respondent No.3.

B.S. WALIA, J.(ORAL)

CM No.23898-CII of 2012

For the reasons mentioned in the application, the delay of 57 days in re-filing the present appeal, is hereby, condoned.

Application is accordingly disposed of.

FAO No.5320 of 2012

1. Appellants i.e. Widow, two sons and one daughter of deceased seek enhancement of the compensation awarded on the ground that only Rs.25,000/- was paid on account of loss of consortium to the widow whereas, as per the decision of the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54***, Rs.1,00,000/- was payable. Relevant extract of the decision of the Hon'ble Supreme Court in aforesaid decision is reproduced as under:-

“20. 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 Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of Rs.5,000/- to Rs.10,000/-. In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium, is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of the spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

2. Secondly, that funeral expenses of only Rs.5,000/- had been awarded whereas in view of the decision of the Hon'ble Supreme Court in **Rajesh and others versus Rajbir Singh and others** (Supra) Rs.25,000/- was payable. Relevant extract of the aforementioned decision is reproduced as under:

"18. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "funeral expenses". The "price index", it is a fact has gone up in that regard also. The head "funeral expenses" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "funeral expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-".

3. Thirdly, that no compensation was awarded towards expenses incurred on account of transportation of the deceased from the place of accident to General Hospital Hansi, thereafter, to N.C. Jindal Hospital, Hisar and finally to PGI MS, Rohtak and back to Hansi on his death i.e. total distance of approximately 125 kms and that in the circumstances at least Rs.40,000/- be awarded.

4. Lastly, learned counsel for the appellants contended that a meager amount of Rs.1,100/- had been awarded towards litigation expenses whereas, as was well known, fee payable to counsel was much more.

5. Learned counsel for the respondent-Insurance Company on the other hand has not controverted the claim for enhancement of compensation on account of loss of consortium. Learned counsel however contended that in the absence of proof of expenses incurred towards transportation charges and litigation expenses, claim towards transportation and litigation charges was not justified. Regarding funeral expenses, learned counsel contended that the same be awarded as per law.

6. I have considered the submissions of learned counsel for the parties.

7. As per the decision of the Hon'ble Supreme Court in Rajesh Vs. Rajbir (supra), a sum of Rs.1,00,000/- is payable towards loss of consortium and Rs.25,000/- towards funeral expenses. Accordingly, in addition to Rs.25,000/- awarded on account of loss of consortium, additional sum of Rs.75,000/- is awarded, raising the total amount payable on account of loss of consortium to Rs.1,00,000/- while Rs.5,000/- awarded towards funeral expenses is raised to Rs.25,000/-.

8. Further, taking into account that the deceased was taken from the place of accident to General Hospital Hansi, thereafter, to N.C. Jindal Hospital, Hisar and finally to PGI MS, Rohtak and back to Hansi on his death i.e. total distance of approximately 125 kms, it is deemed just and proper to award Rs.10,000/- towards transportation charges. Likewise, Rs.1100/- awarded towards litigation expenses is too meagre, accordingly, it is deemed just and proper to raise the amount towards litigation expenses to Rs.5500/-.

9. Learned counsel for the respondent contended that the total amount payable on account of enhancement of compensation is to be reduced by 25% on account of contributory negligence. Accordingly, the following is the amount which is payable to the claimants on modification of the award of the learned MACT.

<i>Sr. No.</i>	<i>Heads</i>	<i>Initially amount awarded by the Tribunal</i>	<i>Enhanced amount</i>
1	Income	5000	No change
2	Dependency after deduction of 1/3 rd as personal expenses of deceased	40,000/-	No change
3	Compensation awardable by applying multiplier of 9	Rs.3,60,000	No change
4	Loss of consortium	Rs. 25000	100000 (additional amount payable is Rs.75000/-)
5	Medical Expenses	1,69,000	No change
6	Transportation charges	Nil	10000
7	Funeral expenses	Rs.5000	25000 (additional amount payable is Rs.20000/-)

<i>Sr. No.</i>	<i>Heads</i>	<i>Initially amount awarded by the Tribunal</i>	<i>Enhanced amount</i>
8	Contributory negligence	Rs.5,59,000/- less 25% on account of contributory negligence i.e. Rs.1,39,750/- =Rs.4,19,250/- (559000-139750)	Rs.6,64,000/- less 25% on account of contributory negligence i.e. Rs.1,66,000/- =4,98,000 (664000-166,000)
	Add : Litigation expenses	1100	5500 (additional amount payable is Rs.4400/-)
	Total	Rs.4,20,350/-	Rs.5,03,500/-

10. No other point has been raised or argued.
11. Accordingly, appeal is allowed in the aforementioned terms, Award of the Tribunal is modified to the extent that the appellants are held entitled to total enhanced compensation of Rs.6,64,000/- which would be reduced by 25%, on account of contributory negligence i.e. Rs.1,66,000/-. Accordingly, the appellants would now be entitled to compensation of Rs.4,98,000/- plus Rs.5500/- as litigation expenses total Rs.5,03,500/- along with interest @ Rs.7.5% per annum from the date of filing of the claim petition till realisation less amount if any already paid.
12. Appeal allowed in aforementioned terms.

October 26, 2017
m. sharma

(B.S. WALIA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No