IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2802-2013 (O&M)
Date of decision: 07.10.2017

Billu Singh and others .... Appellants

Versus

Kulwant Kumar and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Bhawesh Chaudhary, Advocate for
Mr. Vivek Suri, Advocate
for the appellants.

Mr. Arun Jindal, Advocate
for respondent No. 2.

Mr. Neeraj Khanna, Advocate
for respondent No.3.

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Avneesh Jhingan, J.

The present appeal has been preferred against the award dated 11.02.2013 passed by Motor Accidents Claims Tribunal, Patiala (hereinafter referred to as the 'Tribunal').

On 19.04.2011, Bahadur Singh was going on his bicycle along with his wife Bhuri Kaur from Samana to their village near Chak Amritsaria, Samana-Patran Road, a Tata Tempo-709 bearing registration No.HR-37-A-0929 (for short, 'the offending vehicle') struck the bicycle. The offending vehicle was being driven in a rash and negligent manner. As a result of the accident, Bhuri Kaur lost her life and Bahadur Singh suffered injuries. FIR No.27 dated 19.04.2011 was registered at Police Station City Samana.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by three major children and husband of the deceased.

The Tribunal after considering the witnesses and evidence, awarded a sum of Rs.2,69,000/- along with interest @ 7.5% per annum. The said amount included Rs.5,000/- as funeral expenses and loss of dependency compensation is Rs.2,64,000/-.

I have heard the learned counsel for the parties and perused the paperbook with their able assistance.

Learned counsel for the appellant has argued that the deceased was 42 years old housewife, survived by three major children and a husband. The Tribunal has not awarded any amount under the conventional heads. He further argued that in case of house wife, the amount should not have been deducted for self expenses as the income assessed is notional income. He further contended that in case of death of 42 years old, multiplier of 11 has wrongly been applied.

Learned counsel for respondents No.2 and 3 have argued that loss of love and affection should not be granted as the children are major. They contended that amount awarded is sufficient and no further enhancement is called for.

The Tribunal while calculating the loss of dependency has taken the notional income as Rs.3,000/- per month. Thereafter, 1/3rd deduction for self expenses has been made and a multiplier of 11 has been applied.

In the Hon'ble Apex Court in ***Smt. Sarla Verma and others vs.***

Delhi Transport Corporation and another, (2009) 6 SCC 121, *observed as under :-*

> *"21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

From the perusal of the above decision, it is evident that in case of death of 42 years old, a multiplier of 14 has to be applied.

In case of a housewife, the Hon'ble Apex Court in ***Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others, 2015 (4) SCC 237***, has held as under:

> *"Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and home maker. It is hard to monetize the*

> *domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A housewife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependancy."*

As per the decision of the Hon'ble Apex Court referred above, contribution of a house wife cannot be under estimated and it is not possible to calculate her contribution to the family in monetary terms.

This Court relying upon a decision of Hon'ble the Apex Court in case of Arun Kumar Aggarwal and another Versus National Insurance Company and others (2010-3) 159 PLR 428 (SC) in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others, Vol.CLXXII (2013-4) 329***, has held as under:

> *"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the*

age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

In the above decision, it has been laid down that in case of death of house-wife, since it is the notional income which is to be taken into account as her services not only include rearing the children but also perform all matrimonial obligations. In such circumstance, 1/3rd deduction is not warranted.

The loss of dependency compensation is recalculated as under :-

Rs.3000x12x14=Rs.5,04,000/-

The claim of the counsel for the appellant with regard to the grant of compensation under the various heads 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 Rs.5,000/- each towards loss of estate, funeral expenses and loss of consortium. We award Rs.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, Rs.25,000/- towards funeral expenses and Rs.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 Rs.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 Rs.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.

Even the major children should be awarded compensation for loss of love and affection.

This Court in ***Smt. Gurdev Kaur and others Versus Jharmal Singh and another, 2017 (3) The Punjab Law Reporter 9***, has held as under:

"........Appellants-claimant No.2 to 5 who are the major sons and daughters of the deceased also cannot be deprived of the compensation on

account of loss of love and affection simply on the ground that they are major. It is a fact of common knowledge that in our society father enjoys the unique position. Even the major children have lot of love and respect for their father. They also seek guidance and advice of their father for the important matters in their life and family. Thus, appellants-claimants No. 2 to 5 shall certainly be entitled to the compensation on account of loss of love and guidance of their father to the extent of 2,00,000/-.........”

This Court in ***Munshi Ram and another Versus Balkar Singh and others, 2016 (2) PLR 526,*** has held as under:

“4. As regards the quantum in FAO 598 of 2014, the deceased was 51 years of age and a housewife. The claimants were the husband and major son and major daughter. The Tribunal took the value of her services at Rs.2500/-. The counsel argues that there must be prospects of increase. Taking the value of services at Rs.4500/- and allowing for a multiplier of 11 suitable to the age of deceased, I will provide for the lakh of rupees for loss of consortium to the husband and make a further provision of Rs.25000/- to each major son and daughter for loss

of love and affection."

As per the decisions referred above, the claimants are entitled to compensation for loss of love and affection and for loss of consortium. Even the amount awarded under the heads of the funeral expenses needs to be enhanced. The amount awarded by the Tribunal is enhanced as per table given below :-

Sr.No.	***Heads***	***Amount earlier awarded by the Tribunal***	***Now awarded***
1	*Loss of dependency*	*Rs.2,64,000/-*	*Rs.5,04,000/-*
2	Funeral expenses	Rs.5,000/-	Rs.20,000/-
3	Loss of consortium	Not awarded	Rs.50,000/-
4	Loss of love and affection	Not awarded	Rs.1,00,000/-
	Total	Rs.2,69,000/-	Rs.6,74,000/-

The award dated 11.02.2013 is modified to the extent that the amount awarded by the Tribunal of Rs.2,69,000/- is enhanced to Rs.6,74,000/-.

The claimant shall be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

07.10.2017
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1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes