

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

488

FAO No.6209 of 2013
Decided on : 09.10.2017

Ombati and others

... Appellants

Versus

Virender Singh and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Kunal Dawar, Advocate
for the appellants.

Mr.Arun Sharma, Advocate for
Mr.T.K.Joshi, Advocate for respondent No.3.

Avneesh Jhingan , J. (Oral)

The present appeal has been filed against award dated 15.10.2013 passed by the Motor Accidents Claims Tribunal, Palwal (for short the 'Tribunal').

2 On 13.2.2012, Tulsi Ram aged 52 years lost his life in a Motor Vehicular Accident. The motor cycle was being driven by Kumarpal and Tulsi Ram was the pillion rider (it has been wrongly mentioned in the award that Kumarpal was the pillion rider and Kumarpal was driving the motor cycle). The said motor cycle was struck by a PickUp bearing registration No.HR-74/8728 near Bedh Patti village. As a result of the accident, both Kumapal and Tulsi Ram lost their life on the spot. FIR No.50 dated 13.2.2012 was registered at Police Station Hodal.

3. A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short the Act) by widow, two major sons, a minor son and mother of the deceased.

4. The claim petition was numbered as M.A.C.T. Case No.RBT-186 of 2013/2012. The Tribunal awarded a sum of Rs.4,31,000/- along with interest at the rate of 9% per annum. The said amount awarded included a sum of Rs.20,000/- for loss of consortium and loss of love and affection, Rs.5,000/- for loss of estate and Rs.10,000/- for funeral expenses.

5. There is no dispute on the facts of the case by either party.

6. The present appeal has been filed for enhancement of compensation.

7. I have heard learned counsel for the parties, perused the paper-book and record.

8. Learned counsel for the appellants argued that it was claimed that deceased was earning Rs.5000/- per month but the Tribunal has erred in taking his monthly income as Rs.4500/- per month. He has further argued that the amounts awarded under the conventional head are very meager and need to be enhanced.

9. Learned counsel for respondent No.3 resisted the enhancement and argued that the claimants have miserably failed to prove the monthly earning of the deceased. In such circumstances, no enhancement is called for.

10. The contention made by learned counsel for the appellants deserves acceptance. So far as the monthly earnings of the deceased are concerned, though the claimants are not able to substantiate that the deceased was earning Rs.5000/- per month, yet the reliance could have been placed upon the minimum wages fixed at the relevant time. It has

not been disputed that at the time of accident, minimum wages for unskilled labour worker fixed as Rs.4847/- per month. There is no dispute with regard to either of the multiplier or deduction of personal expenses.

11. In the later part, loss of dependency would be recalculated taking the monthly income of the deceased as Rs.4847/- per month.

12. That the contention of the appellants with regard to awarding just and equitable compensation under the conventional heads is supported by the judgment of 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.*

*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. Kunjamma 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.*

13. From the perusal of the above decisions, the legal position is that while dealing with fatal accidents, the compensation should be awarded under various conventional heads and the Hon'ble Apex Court

held that this amount needs to be increased from time to time.

14. 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/-.....”

15. 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 above decision, even major children are entitled to compensation for loss of love and affection.

16. Keeping in view the fact that the deceased was survived by three children, widow and old mother, the amount of loss of dependency is recalculated and the amounts awarded under various heads are enhanced as per table below:-

<i>SR.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount now awarded</i>
1	Loss of dependency	Rs.3,96,000/-	4847 X 12 X 11 = Rs.6,39,804/- minus 1/3rd deduction on self expenses i.e. Rs.2,13,268 = Rs.4,26,536/-
2	Loss of consortium	Rs.20,000/-	Rs.50,000/-
3	Loss of love affection	- nil-	Rs.1,00,000
4	Funeral expenses	10,000/-	Rs.25,000/-
5	Loss of estate	Rs.5000/-	Rs.50,000/-

17 Award dated 15.10.2013 is modified to the extent that
amount awarded by the Tribunal of Rs.4,31,000/- is enhanced to
Rs.6,51,536/-. The claimants shall be entitled to enhanced amount of
compensation along with interest at the rate of 6%. per annum from the
date of filing of the claim petition till realization of the amount.

18. The appeal is, accordingly, partly allowed.

[Avneesh Jhingan]
Judge

09.10.2017

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No