

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 4115 of 2015 (O&M)

Date of Decision: 20.7.2017

Phoolpati and another

.....Appellants

Versus

Rajesh Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Ms. Anu Garg, Advocate for
Mr. V.P.Sangwan, Advocate
for respondents No. 1 and 2.

Mr. Ram Avtar, Advocate
for respondent No. 3.

ANITA CHAUDHRY, J

This is the claimants' appeal seeking enhancement of the award passed on the petition filed under Section 163-A of the Motor Vehicles Act.

The petitioners are the parents of Sombir. Their son was 19 years old and unmarried. He met with an accident on 8.2.2012. A Neel gai (cow) suddenly appeared in front of the car in which the deceased was travelling. The driver lost control. It was claimed that the death had occurred while the vehicle was in use. The claimants had pleaded that their son was a student and an agriculturist and earning Rs. 3300/- per month. The Tribunal noticed the facts in the DDR and the evidence and gave a firm finding that the death had occurred in an accident while the vehicle was in

the age of the parents as 39 and 40 years and making a deduction of 50%, the annual dependency was taken as Rs. 19,800/-. The multiplier of 15 was applied and the compensation was calculated as Rs. 2,97,000/-. A sum of Rs. 20,000/- was added for loss of love and affection, conveyance and last rites raising the total to Rs. 3,17,000/-. The appeal was filed with a delay which was condoned.

The submission on behalf of the appellants is that the multiplier of 16 should have been applied as per the second schedule attached to the Motor Vehicles Act. Counsel for the appellants had also submitted that the interest allowed was only @ 6% which should also be increased. Reliance was placed on *Krishan and another versus Sukhdev Singh and others 2013 (7) RCR (Civil) 2595* and *Bajaj Allianz General Insurance Company Limited and others versus Anil Kumar and others The Punjab Law Reporter Vol. CLXXIII- (2014-1) 129*.

The submission of the counsel appearing for the insurance company was that minimum wages in 2012 were over Rs. 4900/- and this fact has been mentioned by the Tribunal and a lower amount was mentioned so as to file the claim under Section 163-A of the Act.

The question would be whether the multiplier of '15' should be applied as per *Sarla Verma v. DTC, (2009) 6 SCC 121* or '16' as per the 2nd Schedule.

The issue has been examined a number of times by this Court and also by the Apex Court in '*Ramesh Singh and another versus Satbir Singh and another 2008(2) SCC 667*'. It is the 2nd schedule which has to be followed.

The calculations will have to be made again. The multiplier

applicable would be 16 as per II schedule but then the deduction would have to be $\frac{1}{3}^{\text{rd}}$ as provided in the II schedule. No doubt, the Apex Court had found several mistakes in the II schedule but it has not been struck down nor can be discarded. The parents would be entitled to the compensation which can be assessed in the manner given in the II schedule by making a deduction of $\frac{1}{3}^{\text{rd}}$ and applying the multiplier of 16 and then adding the compensation on the miscellaneous heads.

Therefore, taking the income to be Rs. 3300/- per month and making a deduction of $\frac{1}{3}^{\text{rd}}$ the calculation would come to Rs. 2200/- x 12 x 16 = 4,22,400/-. A sum of Rs. 2,000/- is added on account of funeral expenses and Rs. 2500/- as loss of estate raising the total to Rs. 4,26,900/-. The Tribunal had allowed Rs. 3,17,000/- which would be deducted and the amount in excess would carry interest @ 6% from the date of filing of the appeal till the amount is actually paid.

The award is modified and the appeal is allowed to the extent above.

(ANITA CHAUDHRY)
JUDGE

July 20, 2017

Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No