

218 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4615 of 2015 (O&M)

Date of Decision: 11.09.2017.

Sarabjit Kaur and another

... Appellants

Versus

Kulwant Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vipul Aggarwal, Advocate
for the appellants.

Mr. Rajbir Wasu, Advocate
for respondent No.2.

AVNEESH JHINGAN J. (ORAL)

The present appeal is against the award dated 02.01.2015 passed by Motor Accident Claims Tribunal, Amritsar (in short 'the Tribunal').

The claim petition was filed by the parents who unfortunately lost their son Gurjit Singh in an accident on 06.10.2013. He was driving a tractor trolley bearing registration No.PB-18-P-5438. The said trolley met with an accident with a car bearing registration No.PB-02-BZ-0951 which was being driven rashly and negligently. As a result of the accident, Gurjit Singh suffered grievous injuries including head injury. He was taken to Guru Nanak Dev Hospital, Amritsar where he died before getting any treatment. FIR No.152 dated 07.10.2013 was registered at Police Station Kambo, District Amritsar.

The parents filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming that their son was earning ₹12,000/- per month while working as a mason.

The Tribunal considering the witnesses and evidence, awarded an

amount of ₹ 6,48,000/- for loss of dependancy. Further an amount of ₹ 25,000/- was awarded for funeral expenses and ₹ 5,000/- as loss of estate. A total amount of ₹ 6,78,000/- was awarded along with interest @7.5% per annum.

Aggrieved of the said order the present appeal has been filed for enhancement of the compensation.

I have heard the learned counsel for the parties and perused the record.

There is no dispute on the facts of the case. The only issue in the present appeal is that the amount of ₹ 6,78,000/-, awarded by the Tribunal should be enhanced.

Learned counsel for the appellants argued that the monthly income taken by the Tribunal at ₹ 6,000/- (4000+50% future prospects) was on the lower side as the deceased was 22 years old at the time of accident in 2013 and he was working as mason. Counsel for the appellants further argued that amount awarded by the Tribunal under the loss of estate is on the lower side. Further contention has been raised that no amount has been awarded for loss of love and affection and for transportation of dead body.

Learned counsel for respondent No.2 argued that the Tribunal has awarded sufficient compensation and no interference is called for. Counsel contended that the claimants failed to prove that the deceased was earning ₹ 12,000/- per month. It is further argued that the higher multiplier of 18 has been applied while awarding the compensation.

After hearing learned counsel for the parties, it is evident that there is no dispute that the accident was caused due to rash and negligent driving of car bearing registration No.PB-02-BZ-0951. There is no doubt about the fact that the claimants failed to establish that the deceased was earning ₹ 12,000/-

per month. Kulwant Singh, mason was produced as PW3, who tendered his affidavit as PW3/A stating that the deceased was working under his employment and was getting ₹ 400/- per day. In order to support the claim, attendance certificate Exhibit P-4 and attendance card Exhibit P5 to Exhibit P27 were also produced. The Tribunal found that statement of Kulwant Singh and the Exhibit P-4 to P-27 were not worth reliance as nothing was recorded in the exhibits to the effect that some labour was also employed. The Tribunal came to the conclusion that the said exhibits have been prepared just to support the present claim only. The salary of the deceased was worked out at ₹ 6,000/- and after deducting personal expenses, dependancy of ₹ 3,000/- was arrived. The multiplier of 18 was applied. There is no dispute with regard to deduction of self-expenses as the deceased was a 22 years unmarried boy.

As per the minimum wages Act, as applicable to State of Punjab in 2013, the minimum wages of semi skilled labour was ₹ 4685/-. This was the minimum amount the Tribunal should have taken as wages of the deceased.

As per decision of Hon'ble the Apex Court in Sarla Verma Vs. Delhi Transport Corporation, 2009 (SCC) (6) 121, in the present case the deceased was unmarried and aged 22 years. Hence, a multiplier of 18 has been applied and 50% deduction for self expenses to be made.

The net result of the calculation is that the amount awarded by the Tribunal on dependancy compensation of 6,78,000/- is enhanced to ₹ 7,58,970/- which is presented in tabulated manner, as under:-

<i>Sr.No.</i>	<i>Description</i>	<i>amount</i>
1	Annual income 4685x12	₹ 56,220/-
2	Plus 50% future prospects as granted by Tribunal- 56220+28110 =	₹ 84,330/-
3	Self expenses 50% - 84330x 50%=	₹ 42,165/-
4	Multiplier of 18 (42,165 X 18)	₹ 7,58,970/-

The Court while dealing with such cases, has to arrive at just and equitable compensation. Though the grievance and sorrow of the parents who lost their young child cannot be compensated in monetary terms but yet the Tribunal ought to have granted compensation for loss of love and affection.

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.*

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 to the parents under the head of loss of love and affection.

In view of the facts of the present case, the compensation amount are enhanced as under:

<i>Sr. No.</i>	<i>Description</i>	<i>Amount of earlier awarded by the Tribunal</i>	<i>Amount now awarded</i>
1	Loss of dependancy	₹ 6,48,000/-	₹ 7,58,970/-
2	Funeral expenses	₹ 25,000/-	₹ 25,000/-
3	Loss of Estate	₹ 5000/-	₹ 50,000/-
4	Loss of love and affection	Not awarded	₹ 50,000/-
5	Transportation of dead body	Not awarded	₹ 5000/-
	Total	₹ 6,78,000/-	₹ 8,88,970/-

The award dated 02.01.2015 is modified to the extent that the amount of ₹ 6,78,000/- awarded by the Tribunal is enhanced to ₹ 8,88,970/-.

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

The appeal is partly allowed and is disposed of accordingly.

September 11, 2017
rekha

(AVNEESH JHINGAN)
JUDGE

whether speaking/reasoned
whether reportable

Yes/No
Yes/No