IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7952 of 2014
Date of decision: 20.03.2017

Jasbir Kaur and others **..Appellants**

Versus

Pawan Kumar and another **..Respondents**

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. H.K. Aurora, Advocate
for the appellants.

Mr. Sunil Kumar Nehra, Advocate
for respondent No.1.

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Daya Chaudhary, J.

Claimants-appellants have filed the present appeal for modification of award dated 09.04.2014 passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter called as 'the Tribunal') for enhancement of the amount of compensation awarded by the Tribunal on the ground that inadequate compensation has been awarded.

Briefly, the facts of the case are that the appellants filed a claim petition for grant of compensation on account of death of Vicky, husband of appellant No.1-Jasbir Kaur and father of appellant No.2-Nitu and son of appellants No.3 and 4, namely, Charan Singh and Veero. As per claim petition, deceased-Vicky was going on his bicycle. After reaching in front of main gate of Maharaja Aggarsain School, Sirsa from the side of Parshu Ram Chowk, Sirsa towards Preet Nagar, Begu Road, Sirsa, the offending tractor bearing registration No. PB-30C-4964, which was driven in a rash and negligent manner came from behind and struck against his bicycle and crushed him, due to which he received multiple grievous injuries. The driver of the tractor managed to escape from the spot after leaving the tractor there and injured Vicky was shifted to General Hospital, Sirsa, where he succumbed to his injuries. FIR No.340 dated 13.05.2013 was registered under Sections 279, 336 and 304-A IPC at Police Station City Sirsa against respondent No.2.

The age of deceased was 25 years at the time of accident. He was working as POP/Fall ceiling contractor, was a skilled person earning ₹15,000/- per month. The claimants were stated to be fully dependent upon his income of the deceased and they sought compensation of ₹20 lacs along with interest.

The claim petition was contested by the owner and driver by filing joint written statement mentioning therein that the accident had occurred due to negligent driving of the deceased himself. The claim petition was allowed vide award dated 09.04.2014 and the claimants were found entitled for compensation to the tune of ₹11,30,000/- along with interest @ 7.5 % per annum from the date of filing of claim petition till its realization. The amount of compensation was to be paid by respondents No.1 and 2 jointly and severally.

The appellants-claimants have filed the present appeal for enhancement of compensation by raising various grounds.

Learned counsel for the appellants submits that amount awarded as compensation is inadequate and has been awarded by assessing income @ ₹5000/- per month by treating him as a labourer whereas he was earning ₹15,000/- per month being a skilled person, being a POP/fall ceiling contractor. Learned counsel further submits that while applying multiplier of 18 and adding 50% towards future prospects in the assessed income of the deceased, the Tribunal had made 1/3rd deduction for his personal and living expenses, whereas 1/4th deduction should have been made, which is on the higher side as Hon'ble the Apex Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77*** has held that where the number of dependents is between four to six, 1/4th is to be deducted for expenses spent on himself by the deceased. Learned counsel also submits that a meager amount of ₹25,000/- has been awarded towards loss of consortium, which is liable to be enhanced. The interest has also been awarded on the lower side whereas it should have been 12 % instead of 7.5%. No amount has been awarded towards love and affection, care and guidance to minor children whereas they were entitled for the same as per settled position of law in various judgments specially the case of ***Naini Devi and others vs. Rupinder Singh and others, FAO No.3033 of 2001*** decided on ***09.04.2014***. Learned counsel also submits that no amount has been awarded towards transportation charges, which were incurred by the appellants at the time of admission of deceased in the hospital.

Learned counsel for respondent No.1 submits that the issue regarding future prospects is pending before the larger Bench of Hon'ble the Apex Court and the rate of interest is to be awarded as per prevalent rate of interest at the time of accident in the nationalized bank relating to amount deposited in the fixed deposit.

Heard arguments of learned counsel for the parties and have also perused the impugned award as well as other documents available on the file.

The facts relating to accident, filing of claim petition, written statement and passing of award are not disputed.

The enhancement of the amount of compensation has been sought on the ground that correct income has not been taken into consideration while awarding compensation and no amount has been paid towards future prospects, loss of love and affection and transportation.

While deciding the claim petition by the Tribunal, the income of the deceased has been assessed @ ₹5000/- per month, which was to be at par with working labourer. There is no dispute that the deceased was 25 years of age and multiplier of 18 was applied in view of ratio of judgment in **Sarla Verma's case (supra)**. Only an amount of ₹25,000/- has been awarded towards loss of consortium whereas as per ratio of judgment of Hon'ble the Apex Court in ***Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54***, the amount of ₹1,00,000/- should have been awarded for loss of consortium to the widow of the deceased and towards love and affection, care and guidance to the minor children, it should have been ₹1,00,000/- (₹50,000/- each). There is no dispute with regard to ₹25,000/-, which has been awarded towards funeral expenses and no enhancement is required. The deceased left five dependents i.e., widow, two minor children and parents. As per ratio of judgment in **Sarla Verma's case (supra)**, in case the dependents are in between four to six, $1/4^{th}$ amount should have been deducted for personal expenses whereas in the present case, $1/3^{rd}$

amount has been deducted.

Since neither any document or evidence has been produced before the Tribunal nor any arguments have been raised before this Court with regard to income of the deceased, the income cannot be increased.

The chart mentioning the amount, which has been awarded and which requires to be enhanced is prepared as under: -

Sr. No.	***Heads***	***Amount awarded***	***Amount enhanced***
1	Loss of Income	5000/-(income)+2500(50% future prospects)=7500-2500 (1/3rd deduction)=5000 ₹5000/- x 12 x 18 = ₹10,80,000/-	7500(income + 50% future prospects)-1874 (1/4th deduction) =5626 ₹5626/- x 12 x 18= ₹12,15,216/-
2	Loss of consortium	₹25,000/-	₹1,00,000/-
3	Funeral Expenses	₹25000/-	----
4	Love and affection	----	₹1,00,000/-
5	Transportation	----	₹10,000/-
	Total	₹11,30,000/-	₹14,25,216/-

The amount, which has been granted towards loss of income and loss of consortium comes to ₹11,05,000/- and as such, the appellants-claimants are entitled to enhanced compensation by deducting the amount of ₹11,05,000/- from the enhanced amount of ₹14,25,216/-, which comes to ₹3,20,216/-. However, the claim with regard to increase in rate of interest cannot be considered as it was awarded as per prevalent rate of interest in the nationalized bank.

Accordingly, with the aforesaid modification in the award, the appeal is allowed. The claimants shall be entitled to total compensation of ₹11,30,000/- + ₹3,20,216/- as enhanced along with interest @ 7.5% per annum from the date of filing of claim petition till its realization. Respondents No.1 and 2 are directed to pay the amount awarded by the Tribunal as well as the enhanced compensation within a period of one month from the date of receipt of certified copy of this order, after deducting the amount, if not paid earlier. No order as to costs.

20.03.2017 **(DAYA CHAUDHARY)**
neetu **JUDGE**

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No