

Sr. No. 248

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No. 9258 of 2014
Decided on: 01.08.2017**

Amrit Kaur and others

.....Appellants

versus

Virender and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Govind Rana, Advocate for
Mr. Harkesh Manuja, Advocate
for the appellants.

Mr. Chandan Deep Singh, Advocate
for respondent No.3-Insurance Company.

Rajbir Sehrawat, J.(Oral)

This appeal is filed by the claimants challenging the award passed by the Motor Accidents Claims Tribunal, Sonipat (for short, 'the Tribunal') whereby an amount of ₹ 5,29,000/- was awarded on account of accidental death of Chhabila in the motor vehicular accident. The appellants/claimants are aggrieved of insufficiency of the compensation.

The facts as given in brief are that on 05.08.2013 Chhabila alongwith Kukki had gone to Sukhdev Dhaba situated on the G.T., Road at Murthal, Sonipat on a motor cycle bearing Registration No. HR-10K-9074, whereas one Narender @ Kala alongwith Mukesh had gone to the said Dhaba on another motor cycle. After taking the meals at the Dhaba, they were coming on their respective motor cycles. When Chhabila alongwith Kukki reached near Sheesh Mehal Restaurant, G.T.Road, Murthal then an Alto Car bearing Registration No. HR-10N-4041(hereinafter referred to as

the 'offending vehicle'), being driven by respondent No.1 in a rash and negligent manner came from opposite direction and struck against the motor cycle of Chhabila. Due to the hitting of the motor cycle Chhabila and Kukki alongwith motor cycle fell down on the road. Both of them sustained injuries on various parts of their bodies. While being shifted to General Hospital, Sonipat Chhabila succumbed to the injuries. Post mortem was conducted at General Hospital, Sonipat. Regarding this accident, on the statement of Narender FIR No. 226, dated 06.08.2013, under Sections 279, 337 and 304-A of the IPC was also registered at Police Station Murthal. The parents of the deceased and one sister of the deceased filed claim petition in the present case.

Parties led their respective evidence.

After appreciating the evidence, the Tribunal held the offending vehicle liable for causing accident. The parents of the deceased had claimed that the deceased Chhabila was earning ₹ 18,000/- per month. However, PW-2, Sunil deposed that the deceased was working as a driver on his vehicle Tata Magic bearing Registration No. DL-2W-4123. It is his further deposition that the deceased was working as driver with him since April, 2012 and was getting monthly salary of ₹ 7,000/- per month and ₹ 100/- per day as the Diet money. To support his claim, he placed on record Exhibit P-6 the registration certificate of his vehicle, Exhibit P-7 the permit of his vehicle and Exhibit P-8 the driving license of the deceased Chhabila. However, the Tribunal held that since this witness has admitted that he had not maintained any record of employment of Chhabila as driver with him, therefore, the testimony of this witness regarding the salary and diet money cannot be accepted on its face value. But, the Tribunal held that since the

deceased Chhabila was authorised to drive light motor vehicle/commercial w.e.f.13.02.2013, therefore, it could be safely believed that the driver Chhabila was capable of earning at least ₹ 6,000/- per month.

It was further held that the claimant Suman is the major sister of the deceased, therefore, she was not entitled to the compensation in this case. Therefore, only the claimants No. 1 and 2 were held entitled to the compensation being parents of the deceased Chhabila.

The Tribunal further held that in terms of the judgment of the Hon'ble Supreme Court in *Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77*, the deduction of 50% of income is applicable in the case; since the deceased was not married. Therefore, the monthly dependency of claimants upon the deceased was held to be ₹ 3,000/- and calculated in annual terms to be ₹ 36,000/-. It was further held by the Tribunal that the multiplier in this case is to be applied as per the age of the parents. The claimant No. 1, the mother of the deceased was held to be 42 years of age at the time of accident. Resultantly, the multiplier of 14 was applied. Therefore, an amount of ₹ 5,04,000/-(36000 x 14) was awarded on account of loss of dependency. Still further in terms of the judgment of the Hon'ble Supreme Court in *Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR(Civil) 170*, ₹25,000/- was awarded towards Funeral Expenses. Thus, the total amount of ₹. 5, 29,000/- was awarded to the claimants.

The Tribunal had further held that the Insurance Company has failed to prove any violation of terms and conditions of policy as no evidence has been led by the Insurance Company in this regard. Therefore, the Insurance Company was held liable to make the payment of the

compensation.

Learned counsel for the appellants while arguing the case has restricted his arguments on two grounds. *Firstly*, that no amount has been awarded to the claimants/parents on account of *loss of love and affection*. *Secondly*, that no amount has been awarded by the Tribunal on account of future prospects of the enhancement of income of the deceased. In this regard, he has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of ***Vimal Kanwar and others versus Kishore Dan and others, 2013(2) R.C.R.(Civil) 945*** regarding the compensation for *loss of love and affection* and he has further relied upon the judgment of the Hon'ble Supreme Court in the case of ***Rajesh and others (supra)*** to claim the benefit of future prospects.

Learned counsel for the Insurance Company has opposed the prayer of the claimants and has argued that amount has rightly been awarded to the claimants. It is his submission that so far as compensation on account of future prospects in case of death of a self employed person is concerned, the matter stands referred to the larger Bench of the Hon'ble Supreme Court. Therefore, it is his contention that the compensation on account of future prospects cannot be awarded in the present case.

This Court finds merit in the argument raised by learned counsel for the appellants. So far as the compensation on account of loss of love and affection is concerned, the Hon'ble Supreme Court has already held an amount of ₹ 1 lakh to be justified on this count. Accordingly, following the judgment of the Hon'ble Supreme Court in the case of ***Vimal Kanwar and others(supra)*** an amount of ₹ 1 lakh is awarded on account of *loss of love and affection*.

So far as the compensation on account of future prospects is concerned, the same cannot be denied to the appellants merely because a reference has been kept pending by the Hon'ble Supreme Court of India. This Court has already held in a case of ***Future General India Insurance Co. Ltd. @ Future General Insurance Co.Ltd. vs. Rekha and others*** that the judgment of the larger Bench shall have the application only as and when the same is pronounced by the Hon'ble Supreme Court. Till then the existing precedent shall be binding upon this Court. The relevant portion of the judgment rendered in ***Future General India Insurance Co. Ltd. (supra)*** is reproduced herein below for ready reference:-

“After considering the rival submissions of the counsels of the parties, this Court is of the view that although the point of future prospects has been referred to the larger bench of the Hon'ble Supreme Court, however, till the larger bench takes a contrary view; the judgment of the Hon'ble Supreme Court which holds the field as of today; is binding precedent for this Court. The point as decided by the larger bench of the Supreme Court shall hold the field only after and as and when it is pronounced by the Hon'ble Supreme Court. The otherwise available right of a party before the Court can not be denied by this Court only for the reason that the Hon'ble Supreme Court has kept the point qua that right for reconsideration. Keeping a point for reconsideration does not by implication over-rule the existing judgment/precedent on that point. Therefore, the amount of compensation on account of future

prospects cannot be denied to the claimants in this case on the ground that the matter has been referred to the larger bench.”

In view of the above, the arguments of the learned counsel for the appellants are accepted and the arguments of learned counsel for the Insurance Company are rejected. The claimants are rightly held entitled to the benefit of future prospects.

Since the age of the deceased for the purpose of multiplier has been assessed to be 42 years, therefore, the relevant increase would be the increase of 30% as per the terms of the Judgment of the Honb'le Supreme Court rendered in *Sarla Verma's case (supra)*. Since the monthly dependency in the present case has been assessed to be ₹ 3000/-, so after applying 30% increase, the loss of monthly dependency is assessed at ₹ 3000 + ₹ 900(30% of 3000) = ₹ 3900/-. Hence the loss of dependency comes to ₹ 3900 x 12 x 14 = ₹ 6,55,200/-. The compensation on account of loss of love and affection is awarded at ₹1 lakh. Compensation on account of funeral expenses is retained ₹ 25,000/- as awarded by the Tribunal.

In view of the above, the claimants are held entitled to an amount of compensation as given below:-

<i>Sr. No.</i>	Heads of Compensation	<i>Amount(Rs)</i>
1	Loss of Dependency	6,55,200/-
2	Loss of Love and Affection	1,00,000/-
3	Funeral Expenses	25,000/-
	Total	7,80,200/-

The above said compensation shall be available to claimants No. 1 and 2. The sister of the deceased has rightly been excluded from the entitlement of the compensation by the Tribunal. Still further the amount of

interest awarded by the Tribunal is retained as such. So the interest on the above said amount shall remain as was awarded by the Tribunal.

In view of the above, the findings and the award passed by the Tribunal is modified in the above said terms. The present appeal is allowed to the extent mentioned above.

1st August, 2017
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*