IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4792-2002
Date of decision: - 20.08.2018

Daljit Kaur and others

....Appellants

Versus

Gurnam Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. K.S. Nalwa, Advocate,
for the appellants.

Mr. M.S. Bedi, Advocate,
for respondent No.1.

Mr. R.K. Bashamboo, Advocate
for respondent No.2-Insurance Company.

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<u>MAHABIR SINGH SINDHU, J. (ORAL)</u>

Present appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') for enhancement of compensation on account of death of Jasbir Singh son of Chanda Singh (hereinafter referred as 'deceased). The appellants-claimants are widow, grand-daughter and mother, respectively, of the deceased,.

2. A claim petition was filed under Section 166 of the Act by the appellants-claimants before the learned Motor Accident Claims Tribunal, Bathinda (for short 'the Tribunal') with the averments that on 01.02.2000

at about 8.00 PM, the deceased was going on his scooter and when he reached at a distance of 100 yards from his poultry farm, one Jeep bearing registration No.HR-20-F-1084 (hereinafter referred as "offending jeep") driven by respondent No.1 in a very rash and negligent manner came from the side of village Rampura and dashed into his scooter. Consequently, the deceased suffered multiple injuries and he was taken to Civil Hospital, Tapa, but succumbed to the injuries on the way. The dead body was brought to Civil Hospital, Rampura Phul and postmortem was conducted. FIR No.14 dated 01.02.2000, under Section 304-A IPC was also registered against respondent No.1 at Police Station Rampura. The accident was witnessed by Sarabjit Singh son of Hazoor Singh and Nazar Singh son of Gurdial Singh. It is further submitted that on the date of death the deceased was 50 years of age and quite healthy. He was having 40 acres of land and an agriculturist by profession; besides this, also running a poultry farm with the capacity of 6000 birds. Further submitted that deceased was having good reputation and status in the community being the Director of Central Cooperative Bank Limited, Bathinda and his untimely death has shattered the entire family financially as well as mentally.

3. In response to the claim petition, respondent No.1 filed reply and denied the occurrence with the offending jeep. Also submitted that claimants are residing at USA as they have deserted the deceased for the last 12 years. The deceased used to live in village Jethu Ke and thus, they were not dependent on him. Also denied the status of the deceased, including his occupation as well as income. Further disclosed that

offending jeep was insured with respondent No.2.

Respondent No.2 filed separate reply while denying the contents of the claim petition, raised preliminary objections inter alia that driver-respondent no.1 was not holding a valid and effective driving licence at the time of the alleged accident and thus, the claimants are not entitled for any compensation from the insurer. Also submitted that no accident had occurred and if there was any such accident, the same was due to rash and negligent driving of the scooter by deceased and not by respondent no.1. Further submitted that exaggerated claim has been made by the appellants-claimants and prayed for dismissal of the claim petition.

4. On the basis of pleadings of both sides, learned Tribunal framed the following issues: -

> "1. Whether Harjap Singh died in an accident which took place on 01.02.2000 in the area of Jethuke at 8.00 p.m. involving Jeep No.HR-20-F-1084? OPP
>
> 2. Whether the claimants are entitled to claim compensation if so to what amount and from out of the respondents?OPP.
>
> 3. Whether the respondent No.1 Gurnam Singh driver of the jeep was not holding a valid driving licence at the time of accident? If so, its effect? OPR
>
> 4. Whether respondent No.1 was having no registration certificate, fitness certificate and route permit of the offending Jeep? If so, its effect? OPR
>
> 5. Whether the jeep in question was being plied as taxi? If so, its effect? OPR
>
> 6. Whether there was no privity of contract between respondent No.1 and the Insurance Co. If so, its effect? OPR.
>
> 7. Whether respondent No.1 has violated the terms and conditions of the policy? OPR
>
> 8. Relief."

5. In order to prove the claim petition, the appellants-claimants examined Sarabjit Singh as AW-1; Jagdish Ram as AW-2; Daljit Kaur (appellant No.1) appeared herself as AW-3 and Shashi Pal as AW-4 and also produced the documentary evidence Ex.P1 to Ex.P15.

6. On the other hand, respondent No.1 appeared as RW-1 and produced copy of Insurance Cover Note (Ex.R1) and photocopy of driving licence (Ex.R2). Respondent No.2-Insurance Company brought on record the copy of insurance policy (Ex.R3).

7. Learned Tribunal after taking into consideration the entire material on record, decided issue No.1 in favour of the claimants and came to the conclusion that Harjap Singh died in the accident caused with offending jeep driven by respondent No.1 in a rash and negligent manner.

Learned Tribunal decided issues No.3, 4, 5, 6 and 7 jointly against respondent No.2 and came to the conclusion that driving licence of respondent No.1-Gurnam Singh is on record as Ex.R2 and there is nothing on record that same is fake and even if that is so, then also Insurance Company cannot be absolved from its liability to pay the compensation.

Learned Tribunal while deciding issue No.2 came to the conclusion that income of the deceased is not proved and only a guess work is required to be adopted. Learned Tribunal taking in consideration that poultry farm was being run by the deceased at the time of accident and he used to sell some agricultural products, came to the conclusion that deceased was earning ₹300/- per day. Accordingly, his income was assessed as ₹3,600/- and after deducting 1/3rd amount towards his personal expenses, calculated the monthly contribution of ₹2400/- towards family and worked out the annual dependency of ₹2400 x 12 = Rs.28,800/-. Further, while taking into consideration the age of the deceased as 55 years, applied the multiplier of '8' and thus, calculated total compensation as ₹28,800 x 8 = ₹2,30,400/-. In addition, ₹20,000/- (₹10,000 + ₹10,000) were awarded towards loss of consortium and funeral expenses, respectively. Learned Tribunal also awarded an interest @ 9% per annum from the date of filing of the claim petition till its realization and respondent No.2-Insurance Company was held liable to pay the compensation. Out of the total compensation of ₹2,50,400/- (₹2,30,400 + ₹20,000), Daljit Kaur (appellant No.1-claimant) was awarded 2/3rd share and rest of the compensation was to be paid to Surjit Kaur (appellant-claimant No.3). Further observed that Insurance Company would be at liberty to recover the amount from respondent No.1, if there is violation of insurance policy.

8. It is contended by learned counsel for the appellant that keeping in view the age, income and status of the deceased the amount of compensation is on lesser side and the same deserves to be enhanced. Specific reference is made to documents (Ex.A1 to Ex.A8) and further contended that learned Tribunal has committed an error while assessing the monthly income of the deceased @ ₹3,600/- as there is sufficient material on record to prove that it should have been taken at least ₹10,000/- per month. Further argued that in view of the age of the deceased as 55 years and judgment of Hon'ble Supreme Court in **Sarla Verma (Smt.) and others** Vs. **Delhi Transport Corporation**, **(2009) 6**

SCC 121, the learned Tribunal has wrongly applied the multiplier of '8' instead of '11'. Also contended that in view of the judgment of Hon'ble Supreme Court in **National Insurance Company Limited** Vs. **Praney Sethi and others**, **(2017) 16 Supreme Court Cases 680** the appellants-claimants are entitled for the future prospects as well as compensation under other conventional heads.

9. On the other hand, learned counsel for respondent No.2-Insurance Company has argued that impugned award is just and proper and does not require any interference by this Court. Thus, he prayed for dismissal of the appeal.

10. Heard both sides and perused the paper-book.

11. The death of the deceased on account of rash and negligent driving of offending vehicle by respondent No.1 is duly proved. The validity of driving licence of respondent No.1, existence of insurance policy pertaining to the offending vehicle at the relevant time and age of deceased are neither disputed; nor challenged by the respondents either by way of any substantive appeal or cross-objections. Even before this Court also learned counsel for respondent No.2 has not raised any arguments to that effect, therefore, the findings on issues No.1, 3, 4, 5, 6 and 7 are duly affirmed.

12. Now the only point to be determined in present appeal is:-

As to what should be the “just compensation” to be awarded in favour of the appellants-claimants in view of the facts and circumstances of the present case?.

13. Sarabjit Singh, while appearing as AW-1, inter-alia, deposed

that deceased was having 40 killa of land, running poultry farms and getting income of ₹50,000/- per month. Further deposed that he was a Director of Central Cooperative Bank and fully active being healthy. During cross-examination by respondent No.2, this witness denied the suggestion that income of the deceased was not more than Rs.1200/- per month. Again, cross-examination by respondent No.1, he denied the suggestion that deceased was neither doing any agriculture work; nor owner of the poultry farm. He also denied that deceased was not having any source of income.

Jagdish Ram-AW2 deposed that he was dealing the sale/purchase of poultry products in Tappa under the name & style of "Poultry Farm" being the sole proprietor. Further deposed that poultry farm of deceased is situated in village Jethu Ke, having 8000-9000 birds and he used to purchase approximately 7000 eggs daily from that poultry farm with monthly business of ₹2.50 lakhs for the last about 15 years. Also deposed that he used to maintain ledger book with regard to the purchase of eggs from the deceased regularly and he had brought the ledgers pertaining to financial years 1996-1997 to 1999-2000 which was prepared in due course by his accountants Jagan Nath and Dharminder. Specifically deposed that he identify the signatures and writings of his accountants, which are made under his supervision and control with regard to the business dealing with the deceased and copy of the ledgers were produced as Ex.A1 and A2; copy of accounts for the years 1998-99 and 1999-2000 as Ex.A3 and Ex.A4 respectively. This witness deposed that deceased used to earn income of ₹50,000-60,000 per month from the poultry business.

During his cross-examination, stated that he has brought the original ledger book and at present Jagan Nath, Accountant, is not in service, but another accountant, namely, Dharminder is working with him as part time. Also stated that all the pages of ledger for the year 1996-97 are duly page marked. He denied that ledgers are fake and record has been prepared on the asking of the claimants. Further denied that deceased was not having poultry farm and that he earned the income of ₹500/- to ₹700/- per month from the deceased.

Daljit Kaur-AW3 supported the contents of the claim petition and *inter-alia* deposed that the deceased was her husband and about 50 years of age at the time of the accident. He was doing the business of agriculture and poultry farm. Further deposed that income of deceased from poultry farm was ₹50,000-60,000/- per month and also having approximately 10-12 acres of land in his name and about 10-12 acres of land in the name of his son Kushwinder Singh. They were having total 20-22 acres of land and the deceased himself used to supervise the agriculture. The income from agriculture was approximately ₹2.50 lakhs per annum and the deceased was fully fit and active in life as he was neither suffering from any disease; nor habitual of any intoxicant. Further deposed that their grand-daughter, namely, Pavit Kaur, has been residing with them since her birth and she has been brought up by them and the deceased used to bear all the expenses for her maintenance. After the death of deceased, the business of poultry farm has been closed. Also stated that deceased was renowned person as he was the Director of

Central Cooperative Bank and all the claimants were dependent upon him. She denied that deceased was not getting any income from agriculture or that his annual income was not more than ₹20,000/- per annum from poultry farm. She also denied that deceased was owner of half share in poultry farm.

Shashi Pal-AW4, *inter alia* deposed that he is the sole proprietor of M/s Hari Ram & Sons and deceased used to visit for sale of crop. He brought the ledger and account books pertaining to the years 1998-1999 and 1999-2000 written by him and all entries have been made in his own handwriting. Income from crops of deceased for the year 1998-1999 was shown ₹1,86,929.18 and ₹2.01,850.30/- for the year 1999-2000 and thereafter, Harjap Singh died and no income has been shown from the crops.

During cross-examination, he denied that deceased was 70 years of age and voluntarily stated that he was about 50 years old. Also denied the suggestion that he has made false entries in the books of account on asking of opposite party or that deceased has never sold his crops at his shop.

14. Perusal of testimony of Jagdish Ram-AW2 clearly reveals that he used to purchase eggs from the deceased and the same was duly reflected in the ledger books and he used to do the business of ₹2.50 lakhs per month with him. Thus, it is clearly established that deceased was running the poultry farm and there are numerous entries and transactions to that effect in the ledger accounts. Further perusal of the testimony of commission agent Shashi Pal (PW4) supports that earning of

the deceased for the year 1999-2000 from selling of crops was ₹2,01,850/-. Even learned Tribunal has also accepted that deceased was running poultry farm and selling agricultural products in para 14 of the impugned award in the following terms:-

> "The poultry farm was being run by the deceased at the time of the accident and in addition to it, he was enjoying a good reputation. He must also be selling some agricultural products."

Despite the above findings, learned Tribunal applied the guess work and assessed monthly income of deceased of ₹3,600/-, which in the opinion of this Court is erroneous and liable to be interfered.

15. In view of the facts and circumstances discussed hereinabove, there is no hesitation to hold that monthly income of the deceased should be taken at least ₹6,000/- as the established income at the relevant point of time instead of applying any guess work. Resultantly, finding of learned Tribunal on issue No.2 while assessing the monthly income of the deceased as ₹3,600/- is modified and his annual income would be ₹6,000 x 12 = ₹72,000/-. After deducting the 1/3rd component towards the personal expenses of the deceased, net annual dependency would be ₹48,000/-.

16. Since as per the findings of learned Tribunal, the deceased was less than 55 years of age at the time of his death, therefore, in view of the **<u>Sarla Verma's</u> case (supra)**, the multiplier of '11' is attracted instead of '8'. Still further, in view of the law laid down by the Hon'ble Supreme Court in **<u>Pranay Sethi's</u> case (supra),** the appellants-claimants

would also be entitled for addition of 10% on account of future prospects as well as ₹70,000/- under other conventional heads.

17. *Ergo*, the following amounts of compensation would be the "just compensation" for which the appellants-claimants are entitled in the present case: -

Annual dependency	₹48,000/-
Add 10% for future prospects	₹4,800
Add future prospects	₹48,000 + ₹4,800 = ₹52,800/-
Apply multiplier of' '11'	₹52,800 x 11 = ₹5,80,800/-
Conventional heads, namely, loss of estate, loss of consortium and funeral expenses	₹15,000 + ₹40,000 + ₹15,000 = ₹70,000
Total compensation	₹5,80,800/- + ₹70,000 = ₹6,50,800/-
Compensation payable	₹6,50,800/- (Less compensation already paid)

18. The enhanced amount of compensation shall carry the same rate of interest as awarded by learned Tribunal i.e. @ 9% per annum.

19. The remaining conditions of disbursal of amount shall remain unaltered and the compensation be paid within a period of six weeks from the date of receipt of certified copy of this order.

20. With the afore-mentioned modifications of the impugned award, the present appeal is allowed.

(MAHABIR SINGH SINDHU)
JUDGE

August 20, 2018
naresh.k

Whether reportable? Yes
Whether reasoned/speaking? Yes