

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

F.A.O No. 10634 of 2014

Date of decision:- 22.01.2018

Dalip Mishra and anr.

...Appellant

Versus

Rakesh Kumar and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. S.S. Khurana, Advocate
for the appellant

Mr Subhash Goyal, Advocate
for respondent No. 3-Insurance Company.

RITU BAHRI J. (Oral)

1. The present appeal has been preferred by the claimants-appellants, seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Rewari (for short, 'the Tribunal') to the tune of Rs.09,73,535/- vide impugned award dated 08.09.2014.

2. The facts which are not in dispute are that on 20/21.01.2013, the deceased Vinay Kumar along with Karan Singh was waiting for his cricket team and in the meantime, a bus came and his team members were alighting from the said bus. When Vinay Kumar was going to received his team members, a maruti a lot car bearing registration No. HR26BP2312, which was being driven by respondent No. 1 came from the side of Delhi and struck against the deceased, as a result of which the deceased fell down and the car passed over his body. He was taken to H-Way Hospital,

Dharuhera from where he was referred to Asian Institute of Medical Science, Faridabad where he succumbed to the injuries on 03.02.2013. F.I.R No. 28 dated 03.02.2013 was also registered in this regard at P.S. Dharuhera under Sections 279/304-A IPC.

3. As per the Tribunal, the deceased in the present case was 19 years old at the time of the accident. The Tribunal took the income of the deceased at Rs.4000/- per month and 1/2 was deducted towards personal expenses and thereafter, applied the multiplier of 15, in view of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77***. The claimants were awarded Rs.25000/- for the last rites and Rs.5,88,535/- towards the amount which was spent on the treatment of the deceased. The total compensation awarded to the claimant was Rs.09,73,535/-.

4. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced, in view of the judgment "***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77***", '***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54***' and '***Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent Apex Judgments 459***', ***Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520*** and ***Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193***.

5. On the other hand, the learned counsel for the respondent-Insurance Company has vehemently opposed the present appeal.

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

7. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** wherein the issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

“54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are

likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”.

7. In the present case, the compensation is being reassessed as per the judgments mentioned above:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs.5500/- per month
(ii)	40% of (i) above to be added as future prospects=	Rs.5500+Rs.2200=Rs.7700/- per month
(iii)	½ of (ii) deducted as personal expenses of the deceased=	Rs.7700-Rs.3850=Rs.3850/- per month
(iv)	Compensation after multiplier of 18 is applied	Rs.3850 X 12 X 18= Rs.08,31,600/-
(v)	Conventional heads (Loss of estate and funeral expenses)	Rs.30,000/-
(vi)	Medical Treatment	Rs.5,88,535/-
	Total Compensation awarded	Rs.14,50,135/-
	Enhanced amount of compensation	Rs.14,50,135-Rs.09,73,535=Rs.4,76,600/- (rounded off to Rs.4,76,000/-)

9. The enhanced amount of compensation of Rs.4,76,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% per annum from the date of filing of the claim petition, in view of the judgment

of Hon'ble the Supreme Court in a case of *Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539*. The remaining conditions of disbursal of amount shall remain unaltered.

10. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

22.01.2018

G Arora

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No