IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 22.11.2018

FAO No.1507 of 2014 (O&M)

RAJINDER KAUR & ORS ... Appellants

Versus

JAGSIR SINGH & ORS ... Respondents

FAO No.4902 of 2014 (O&M)

NIRMAL KAUR & ORS ... Appellants

Versus

JAGSIR SINGH & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashwani Arora, Advocate for the claimants.

Mr. Harsh Aggarwal, Advocate for the insurance company.

Mr. Madan Bhandari, Advocate for driver and owner.

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1507 and 4902 of 2014 as these have emerged out of the same accident that took place on 13.07.2012 in which Gurcharan Singh and Gurmeet Singh sustained injuries that proved fatal.

FAO No.1507 of 2014 has been filed by Rajinder Kaur and others in regard to death of Gurcharan Singh seeking enhancement of compensation whereas the other appeal has been preferred by Nirmal Kaur and others qua death of Gurmeet Singh for the purpose of enhancement.

FAO No.1507 of 2014

The Tribunal has awarded compensation of Rs.14,96,800/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.37,245/-
2. Deduction for personal expenses	1/3rd
3. Annual dependency upto the date of retirement	Rs.2,97,960/-
4. Annual dependency post retirement	Rs.1,48,980/-
5. Multiplier	8
6. Loss of dependency	Rs.14,89,800/-
7. Loss of consortium	Rs.5000/-
8. Funeral expenses	Rs.2000/-

Counsel for the claimants would argue that gross salary of the deceased was Rs.44,093/- and the entire salary is required to be taken into consideration for computing loss of dependency after applying appropriate multiplier on the basis of age of the deceased and deduction for personal expenses in the light of judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**. Adequate compensation may be allowed under conventional heads. Claimants are entitle to addition in income for future prospects @ 15%. It is further argued that split multiplier applied by the Tribunal is not tenable in the light of judgment of this Court **Jasmel Kaur and another Vs. Sukhraj Singh and others, FAO No.4858 of 2012 and another connected case, decided on 07.02.2018.**

Counsel representing the insurance company, on the contrary, would urge that the Tribunal has rightly assessed income of the deceased @Rs.37,245/- per month and correctly applied split multiplier in the circumstances that the deceased was more than 57 years of age at the time of occurrence and was due for retirement in less than one year from the date of his death.

The deceased was working as Sub Inspector in Punjab Police, born on 05.05.1955. The Tribunal, in para 21 of the award, has noticed salary certificate of the deceased Ex.P4 produced by PW2, a witness from his department. Perusal of the details given in the salary certificate would reveal that the deceased was paid certain allowances i.e. EMA, KMA, RA, Travelling Allowance, HRA and CA out of which Rs.4000/- were deducted towards GPF and Rs.30 for GIS. As allowances paid to the deceased were available to his family, the same cannot be taken out of consideration for computing loss of dependency. In this context, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. VS. Indira Srivastava and others, 2008(1) RCR (Civil) 359** and **Manasvi Jain VS. Delhi Transport Corporation, 2014(3) RCR (Civil) 313**. That being so, the entire income of the deceased to the tune of Rs.44,093/- shall be taken into account for computing loss of dependency minus liability to pay income tax. The annual income is Rs.5,29,116/- and after deducting income tax of Rs.35,823/-, the net income is Rs.4,93,293/-. Claimants shall be entitle to addition in income for future prospects @ 15% as the deceased was a regular government employee.

The application for compensation has been filed by the widow and two adult sons of Sh. Gurcharan Singh. The Tribunal has rightly deducted 1/3rd for personal expenses.

The deceased was more than 57 years of age and appropriate multiplier for computing loss of dependency would be 9. The Tribunal has applied split multiplier to compute loss of dependency but the same cannot be accepted when examined in the light of judgment of this Court **Jasmel Kaur and another's case (supra)**. Accordingly, loss of dependency is calculated at Rs.34,03,721/- [(4,93,293 x 9) + (15% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium to the widow	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.34,73,721/- and the additional amount is Rs.19,76,921/- (34,73,721 - 14,96,800), payable with interest @7.5% per annum from the date of petition till realization, to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

FAO No.4902 of 2014

The Tribunal has awarded compensation of Rs.44,44,213/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.29,173/-
2. Addition in income for future prospects	30%

3. Multiplier	13
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.44,37,213/-
6. Expenses on funeral	Rs.2000/-
7. Loss of consortium	Rs.5000/-

The deceased was Head Constable in Punjab Police, born on 04.02.1966 and accordingly he was more than 46 years of age at the time occurrence. The Tribunal, in para 21 of the award, has taken note of salary certificate Ex.P4 and total salary is Rs.34,181/- per month. In view of my findings recorded in FAO No.1507 of 2014, the entire salary is taken into consideration for computing loss of dependency except that liability to pay income tax shall be deducted. In view of the above, annual income after deducting income tax (Rs.21,017) is calculated at Rs.3,89,155/-. The Tribunal has rightly applied multiplier of 13 available for the age bracket of 46 to 50 years. Addition in income for future prospects @ 30% is correct and affirmed.

The Tribunal has allowed deduction of 1/4th for personal and living expenses of the deceased. The application for compensation has been filed by the widow, two minor children and father of Gurmeet Singh. Counsel for the claimants would inform that father of the deceased has since passed away. Though Nirmal Kaur, one of the claimants and widow of the deceased would depose that all the claimants were dependent upon income of the deceased but there is no specific evidence on record that Sh. Dayal Singh father of the deceased did not have any source of income. Sh. Dayal Singh did not appear in the witness box to say about his dependency upon income of deceased Gurmeet Singh. There is nothing on record suggestive of the fact that Dayal Singh suffered from any disability rendering him incapacitated to make his livelihood. In the given circumstances, deduction for personal expenses would be 1/3rd. Accordingly, loss of dependency is calculated at Rs.43,84,479/- [(3,89,155 x 13) + (30% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to Rs.1,50,000/-, detailed hereunder:-

1. Loss of consortium to claimants No.1 to 3	Rs.1,20,000/- (Rs.40,000/- each)
2. Expenses on last rites	Rs.15,000/-
3. Loss to estate	Rs.15,000/-

Total compensation is Rs.45,34,479/- and the additional amount is Rs.90,266/- (45,34,479 - 44,44,213), payable with interest @7.5% per annum from the date of petition till realization, to be shared by the claimants in equal proportion. The share of minors shall be invested in fixed deposits payable on their attaining age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

22.11.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No