

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

FAO No. 5570 of 2014 (O&M)

Date of Decision: 11.10.2018

Smt. Bala @ Rajbala and others

... Appellants

Versus

Sumer Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Arvind Kumar Yadav, Advocate for
Mr. Mukesh Yadav, Advocate,
for the appellants.

Mr. Pradeep Kumar, Advocate,
for respondent No.3.

TEJINDER SINGH DHINDSA, J.(ORAL)

This is a claimants' appeal seeking enhancement of compensation.

Briefly noticed that a claim petition under Section 166 of the Motor Vehicles Act was filed before the Motor Accident Claims Tribunal, Narnaul claiming compensation to the tune of Rs.30 lakhs on account of death of Jaswant in a motor vehicle accident that took place on 18.05.2012.

Claimants were the widow, two minor children and parents of the deceased. In the claim petition, it was asserted that on the fateful day i.e. 18.05.2012, while Jaswant (since deceased) was proceeding on foot and on the '*kacha berm*' of a road, he was struck from behind by a pick up vehicle bearing registration No.HR-66-4186. Jaswant is stated to have suffered fatal injuries in

such accident. FIR No.113 dated 18.05.2012 under Sections 279/304-A IPC was registered at Police Station Sadar Narnaul.

Claimants asserted that deceased was 39 years of age and was earning Rs.10,000/- per month by running a photo studio under the name and style of Raj Photo Studio.

The claim petition having been contested, respondent Nos.1 and 2 i.e. the owner and driver of the offending vehicle filed separate written statements and thereby denying accident. Respondent No.3 Insurance Company also filed a written statement raising objections with regard to violation of the terms and conditions of the insurance policy apart from other grounds.

On the pleadings of the parties, the following issues were framed by the Tribunal:

- 1. "Whether the accident has been caused on 18.05.2012 in the area of village Ashram Faizabad, Police Station Sadar, Narnaul due to rash and negligent driving of offending vehicle i.e. Pick-up registration No. HR-66-4186 and caused death of Jaswant as alleged? OPP***
- 2. If issue No.1 is proved, then what amount of compensation, the petitioners are entitled to and from whom? OPP***
- 3. Whether the respondent No.1 was holding a valid and effective driving license at the time of accident? OPR***
- 4. Whether the respondent has violated the terms and conditions of the insurance policy? OPR***
- 5. Whether the insurer is liable to indemnify the liability if insured? OPR***

6. Whether the petition is not maintainable in the present form? OPR

7. Whether the petitioners have no locus standi or cause of action to file the present petition? OPR

8. Whether the petitioners have concealed true and material facts from the Tribunal and have not come with clean hands? OPR

9. Relief.”

Insofar as issue No.1 is concerned, findings have been returned by the Tribunal in favour of the claimants and it has been held that death of Jaswant occurred on account of injuries suffered in the accident dated 18.05.2012 involving the offending/insured vehicle and which was being driven in a rash and negligent manner of its driver, namely, Sumer Singh.

As regards quantum of compensation is concerned, the Tribunal in its award dated 01.10.2013 has awarded a total compensation amount of Rs.7,37,080/- along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. The liability to pay the compensation amount has been held to be joint and several upon the respondents.

Since the only issue arising in the instant appeal is with regard to quantum of compensation, I have heard counsel for the appellants/claimants as also learned counsel representing the contesting respondent Insurance Company.

Perusal of the award dated 01.10.2013 rendered by the Motor Accident Claims Tribunal, Narnaul would reveal that while computing the compensation amount, the income of the deceased

has been assessed as Rs.4800/-. 1/10th deduction in income has been made towards personal and living expenses of the deceased. By taking the age of the deceased as 40 years on the date of accident, the multiplier of 12 has been applied. An amount of Rs.1 lakh has been awarded towards loss of consortium to the widow/appellant No.1 and an amount of Rs.25,000/- has been awarded towards last rites.

Having heard counsel for the parties at length, this Court is of the considered view that the compensation amount would require to be re-visited and re-assessed in the light of dictum laid down by numerous judgments delivered by the Apex Court.

As far as monthly earnings are concerned, claimants had asserted that deceased was earning Rs.10,000/- per month being a photographer and running his own Photo Studio under the name and style of Raj Photo Studio. However, no evidence had been adduced on record to substantiate such plea.

The Tribunal has proceeded to assess the monthly income of the deceased to be Rs.4800/- i.e. at par with the minimum wages admissible to an unskilled worker in relation to the date of accident.

In the considered view of this Court, there is a marginal scope of enhancement insofar as monthly income is concerned. The accident had taken place on 18.05.2012. Deceased was an able bodied person, aged 40 years. He was looking after a family comprising of his widow and two minor children. Even though the

parents are also claimants in the claim petition but in any case father cannot be viewed as a dependent on the deceased. Minimum wages admissible to an unskilled worker at the relevant point of time can at best be a guiding factor.

While computing the figure towards just and adequate compensation, it would be equitable to assess the monthly income of the deceased as Rs.5500/- in relation to the date of accident. It is so directed.

The claimants had asserted that the age of the deceased was 39 years as on the date of accident. No documentary evidence to prove such fact had been adduced on record. The Tribunal has proceeded to accept the age of the deceased as 40 years as was mentioned in the post-mortem report which had been duly exhibited. The same does not call for any intervention.

The Tribunal has resorted to a 1/10th deduction from the monthly income of the deceased. Since the number of dependents of the deceased were four in number, the Tribunal ought to have made a 1/4th deduction instead of 1/10th from the monthly income as per judgment of the ***Hon'ble Supreme Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77.*** It is so directed.

The Tribunal has completely overlooked the aspect as regards addition in income towards future prospects. Since it was the case of the claimants themselves that the deceased was self employed and by keeping in view his age to be 40 years, an addition in income @ 25% towards future prospects is granted as

per judgment of the ***Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

This Court finds that the Tribunal has further erred in applying multiplier of 12 to the multiplicand. As per ***Sarla Verma's case (supra)*** and keeping in view the age of the deceased to be 40 years, the multiplier of 15 ought to be applied. It is so directed.

The Tribunal in its award dated 01.10.2013 has awarded Rs.1,25,000/- under the conventional heads i.e. Rs. 1 lakh for loss of consortium in favour of the widow and Rs.25,000/- towards the last rites.

Learned counsel representing the appellants has placed reliance upon a recent judgment of the ***Apex Court in Magma General Insurance Company Limited Vs. Nanoo Ram @ Chohru Ram and Others (civil appeal No.9581 of 2018) arising out of SLP (civil) 3192 of 2018 decided on 18.09.2018*** to contend that a sum of Rs.50,000/- each ought to have been awarded towards love and affection in favour of minor children and further an amount of Rs.40,000/- each ought to have been awarded in favour of the parents of the deceased towards filial consortium.

I am unable to accept such contention raised by counsel with regard to aspect of awarding compensation under the head of loss of consortium. This Court would be guided by the Constitutional Bench judgment rendered by the Apex Court in ***Pranay Sethi's case (supra)*** and wherein it had been held as follows:-

51. As far as multiplier or multiplicand is concerned, the same has been put to rest by the judgments of this Court. Para 3 of the Second Schedule also provides for General Damages in case of death. It is as follows:-

“3. General Damages (in case of death): The following General Damages shall be payable in addition to compensation outlined above:-

(i) Funeral expenses - Rs. 2,000/-

(ii) Loss of Consortium, if beneficiary is the spouse – Rs. 5,000/-

(iii) Loss of Estate - Rs. 2,500/-

(iv) Medical Expenses – actual expenses incurred before death supported by bills/vouchers but not exceeding – Rs. 15,000/-”

52. On a perusal of various decisions of this Court, it is manifest that the Second Schedule has not been followed starting from the decision in Trilok Chandra (supra) and there has been no amendment to the same. The conventional damage amount needs to be appositely determined. As we notice, in different cases different amounts have been granted. A sum of Rs. 1,00,000/- was granted towards consortium in Rajesh. The justification for grant of consortium, as we find from Rajesh, is founded on the observation as we have reproduced hereinbefore.

53. On the aforesaid basis, the Court has revisited the practice of awarding compensation under conventional heads.

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.

Ultimately, the following conclusions were drawn in para 61 of the judgment and the same are reproduced hereunder:-

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25%

where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) 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 aforesaid amounts should be enhanced at the rate of 10% in every three years."

By following the dictum laid down in **Pranay Sethi's case (supra)**, the amount of Rs.1,25,000/- awarded under the conventional heads would now stand scaled down to Rs.70,000/- i.e. Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and a like amount of Rs.15,000/- towards funeral expenses.

In view of the above, the compensation amount is re-assessed and calculated as follows:-

Sr. No.	Head	Calculation
1.	Income Rs.5500/- p.m.	Rs.5500/-
2.	Addition in income @ 25%	Rs. 5500 + 1375=6875/-
3.	1/4 th deduction towards personal and living expenses of the deceased	Rs.6875-1719=5156/- Rs. 5156 x 12=61,872/-
3.	Compensation after applying multiplier of 15	Rs. 61,872 x 15=9,28,080/-
4.	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.9,28,080+70,000= Rs.9,98,080/-

The afore-calculated enhanced compensation be released in favour of appellant Nos.1 to 4 in equal shares along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

Appeal is allowed in the aforesaid terms.

11.10.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes