

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

RSA No.100 of 2012 (O&M)

Date of Decision.25.01.2018

Gurpreet Kaur and others

.....Appellants

Vs

Municipal Committee and others

....Respondents

2. RSA No.183 of 2012 (O&M)

Gurpreet Kaur and others

.....Appellants

Vs

State of Punjab and others

....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Mayank Mathur, Advocate
for the appellants.

Mr. Vishwajit Bedi, Advocate
for the respondent No.3 and 4 in RSA No.183 of 2012 and
for respondent No.1 & 2 in RSA No.100 of 2012.

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AMIT RAWAL J.(ORAL)

C.M. No.244-C of 2012 in RSA No.100 of 2012

C.M. No.445-C of 2012 in RSA No.183 of 2012

For the reasons stated in the applications, delay of 34 days in
filing the respective appeals is condoned.

Applications are allowed.

C.M. No.245-C of 2012 in RSA No.100 of 2012

C.M. No.446-C of 2012 in RSA No.183 of 2012

The prayer in the applications is to present the respective
appeals as indigent person on the premise that originally suit for damages
was filed for claiming compensation on the demise of their father,
Kulwinder Singh, who died due to negligence of the Municipal Committee,

Patiala and permission was granted to file the suit as indigent person as after

the demise of their father, mother has also performed second marriage, leaving custody of the children to grandmother-appellant No.3.

For the reasons aforementioned, I am of the view that once the trial Court had also sought report with regard to the procedure being followed under Order 33 Rule 1A CPC and allowed the appellants-plaintiffs to present the suit as an indigent persons, I deem it appropriate to grant permission to the applicant-appellants to file the appeal as indigent persons.

The applications are allowed.

Main cases

This order of mine shall dispose of two appeals preferred against the judgments and decrees passed by the lower Appellate Court whereby the suit for claiming damages on account of death of Kulwinder Singh, father of appellant No.1 and 2 and son of appellant No.3 decreed to the extent of ₹3,34,000/- along with interest @6% simple interest per annum, has been partly modified by reducing the amount to ₹2,84,000/- with interest@6% per annum.

It would be axiomatic to give brief pleading of the parties to the *lis*. The appellants-plaintiffs instituted the suit as indigent persons for claiming compensation for relief of ₹3,84,000/- for death of Kulwinder Singh son of Kartar Singh and the appellant Nos.1 and 2, who were minors at that time, were represented through their grandmother on the premise that Kulwinder Singh was a photographer by profession and he used to run his business as a private photographer as M/s Harry Studio, Lower Mall, Patiala. He used to earn ₹3000/- per month. Earlier, he used to run his own photography business under the name and style of M/s Venus Studio at Amargarh but owing to ill-health of his parents, he shifted to Patiala. On

25.9.1993 at about 10.30 AM, defendant Nos.3 and 4 along with President, Municipal Committee, Patiala, 150 workers and labourers came to market where the building of Harry Studio was situated for demolition of the building. However, no prior notice was served for carrying out the demolition work. Defendant No.3 and 4 without listening the request of shopkeepers ordered to demolish the shops built in Singh Sabha Market, Thikri Wala Chowk, Patiala. Even no time was given to remove their goods. Kulwinder Singh was inside his studio and he on hearing the sound of demolition of shop in order to save his life ran out of the shop. But defendant No.3 and 4 and their labourers without seeing Kulwinder Singh and other occupants coming out from the shop continued hammering the roof of the shop and the roof suddenly fell down on Kulwinder Singh and some other persons. Kulwinder Singh succumbed to the injuries. An FIR bearing No.131 dated 25.9.1993 under Sections 302/427/148/149 IPC was lodged against defendant No.3 and 4 and others.

Kulwinder Singh was aged 28 years at the time of alleged accident and therefore, an amount of ₹3,84,000/- was claimed as compensation. It was further stated that the defendants approached the mother of the minors and father of Kulwinder Singh and assured them of the payment of full and final compensation after completing the formalities and a cheque of ₹50,000/- was given to the widow of Kulwinder Singh but no amount has been given to the plaintiffs. Having left with no other option, a demand notice dated 6.12.1993 was served upon the defendants to pay the amount of ₹3,34,000/- within two months from the receipt of notice and having failed to pay any compensation by the defendants, appellants-plaintiffs were compelled to institute the suit.

Defendant No.1, 2 and 5 failed to appear and proceeded ex parte. Defendant No.3 and 4 contested the suit by taking preliminary objections that the suit was barred by law of limitation and the suit was not maintainable as notice as per the provisions of Section 49 of the Municipal Council Act was not served. The factum of Kulwinder Singh running a photography business was also denied. It was stated that Chief Secretary, Govt. of Punjab vide letter dated 4.9.1993 directed all the Deputy Commissioners to launch a special campaign for removal of encroachments. It was under those orders, the demolition drive was undertaken. Therefore, there cannot be any negligence attributed upon them. The Deputy Commissioner, Patiala had also paid a sum of ₹20,000/- to the legal heirs of Kulwinder Singh vide cheque No.446793 dated 29.9.1993 or over and above another sum of ₹50,000/- was paid to heirs of Kulwinder Singh through his widow Paramjit Kaur at the time of bhog ceremony on behalf of the Municipal Council. Another amount of ₹30,000/- was paid vide cheque No.920914 dated 16.10.1993 to the heirs of Kulwinder Singh. In view of the aforementioned amount paid to the plaintiffs, they were estopped to institute the suit. Moreover, in the FIR, the defendants had been acquitted. The trial Court on the basis of variance between the parties framed the issues for the parties to lead evidence in respect of their claims and defence.

Mr. Mayank Mathur, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the trial court on the preponderance of the evidence found that defendant No.3 and 4 did not place on record any order of the Government to show that they were acting in order to discharge their official duty due to which death of Kulwinder Singh, father of

appellant No.1 and 2 and son of appellant No.3 occurred and determined a compensation of ₹3,34,000/-. The acquittal was based upon the evidence led in the criminal case and the finding of the criminal court was not binding on the trial Court. The aforementioned judgment and decree rendered by the trial Court was assailed by defendants in two separate appeals wherein the lower Appellate Court without assigning any reason reduced the amount of compensation as indicated above i.e. from ₹3,34,000/- to ₹2,84,000/-.

He further submitted that the lower Appellate Court has committed illegality and perversity in not applying the formula prescribed in the Motor Vehicles Act for determining compensation as done in the motor accident cases. The death on account of falling of the roof has not been denied, much less, the defendants also did not place on record any order, therefore, there was no occasion for the lower Appellate Court to reduce the compensation rather the amount of compensation is liable to be enhanced by applying the multiplier of 17 as the deceased was 28 years of age and was earning ₹3000/- per month. In support of his contention, relies upon the judgment of Hon'ble Supreme Court rendered in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 121* and *National Insurance Company Limited Vs. Pranay Sethi and others 2017 13 SCALE 12.*

He further submitted that the lower Appellate Court was erroneously swayed away in reducing the amount of compensation on account of the fact that a sum of ₹1 lac has already been paid to the heirs of Kulwinder Singh but lost sight of the fact that the same was given to the widow of Kulwinder Singh and mother of appellant Nos.1 and 2, who

left the children in lurch and therefore, they were not paid single penny of compensation, thus, urges this Court for setting aside the judgment and decree passed by the lower Appellate Court by allowing the appeal.

Per contra, Mr. Vishwajit Singh, learned counsel appearing on behalf of the respondents submitted that judgment and decree passed by the lower Appellate Court does not call for interference. The amount of compensation cannot be enhanced in the absence of any appeal filed by the plaintiffs before the lower Appellate Court. The finding with regard to alleged negligence had not been assailed by the defendants but the compensation awarded is just and fair and does not require any enhancement.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Vishwanjit Singh. The facts which are not controverted are as follows:-

- (i) Kulwinder Singh was working as photographer and earning an income of ₹3000/- per month. Appellant Nos.1 and 2 being minor children at the time of the alleged accident and appellant No.3 being mother of the deceased, defendant No.5-widow, left the children in the custody of the grand parents after taking compensation of ₹1 lac.
- (ii) Demolition drive conducted by the Municipal Committee due to which Kulwinder Singh died.

First and foremost, it is to be seen whether in the appeal preferred by the Municipal Committee whereby both the Courts below have found them to be negligent in performing their duties, “whether in such circumstances, the lower Appellate Court taking into consideration the fact

that widow of the deceased-defendant No.5, Paramjit Kaur, had been given compensation of ₹1 lac, the said amount could be reduced from the compensation awarded by the trial Court.” “Whether the appellant-children are entitled to enhancement in the compensation by invoking the provisions of Order 41 Rule 33 CPC”.

The question posed aforementioned, in my view, is liable to be answered in favour of the appellants-plaintiffs and against the defendants. Admittedly, defendant No.5, Paramjit Kaur received ₹1 lac as compensation and did not come forward to contest the same. Appellants Nos.1 and 2 were minors at the time when Kulwinder Singh succumbed to the injuries, left in the custody of appellant No.3 i.e. the grandmother. This aspect has been lost sight by the lower Appellate Court, thus, reasons assigned are bereft of evidence on record, rather by exercising the power under Order 41 Rule 33 CPC, the formula should have been applied as laid down by the Hon'ble Supreme Court in the judgments (supra). It is settled law that in appeal preferred by the parties, the judgments of the Courts below can always be assailed under order 41 Rule 33 CPC. Similarly in this Court too.

The second question as to whether the appellants-plaintiffs are entitled to enhancement of compensation is also answered in their favour for, the deceased Kulwinder Singh was aged 28 years and stated to be earning ₹3000/- per month. The plaintiffs are two children and mother of Kulwinder Singh. The Hon'ble Supreme Court in **Pranay Sethi's case** (supra) laid down the following principles for assessing the compensation:-

“(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.

Therefore, while applying the formula as is applied for assessing the compensation in motor accident cases, I will take the income of the deceased as ₹3000/- per month, provide a 40% increase on the same,

apply a deduction of $\frac{1}{3}$ rd towards personal expenses and adopt a multiplier

of 17 to assess the loss of dependency as ₹5,71,200/-. I will further add to it ₹15,000/- each towards funeral expenses and loss of estate.

In all, the compensation payable shall be ₹6,01,200/-. The amount in excess of the amount as assessed by the trial Court shall also attract @6% from the date of filing of the appeal till realization. The enhanced amount shall be distributed in the ratio of 2:2:1 amongst the appellants-plaintiffs.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation

to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled." [at paras 27 - 29] ”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

In view of the aforementioned, the judgments and decrees

passed by the lower Appellate Court is set aside and the judgment and

decree passed by the trial Court is modified to the above extent.
Resultantly, both the appeals stand allowed. Decree sheet be prepared accordingly.

January 25, 2018
Pankaj*

(AMIT RAWAL)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No