IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101 FAO No. 2097 of 1994 (O&M)
Date of Decision: 03.04.2019

Parampreet Kaur and another
-Appellants
Vs
Gurmeet Singh and others
-Respondents

FAO No. 2098 of 1994 (O&M)

Amolak Singh and others
-Appellants
Vs
Gurmeet Singh and others
-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S. Swaich, Advocate, and
Mr. Deepak Negi, Advocate,
for the appellants.

Mr. Aman Sharma, Advocate,
for respondent No.3.

Mr. Vishwajit Bedi, Advocate,
for respondent No.4.

Mr. Neeraj Khanna, Advocate,
for Insurance Company.

****

RAJ MOHAN SINGH, J.

Vide this common order, FAO No. 2097 of 1994 (O&M) titled 'Parampreet Kaur and another vs Gurmeet Singh and others' and FAO No. 2098 of 1994 (O&M) titled 'Amolak

Singh and others vs Gurmeet Singh and others' are being disposed of.

FAO No.2097 of 1994 (O&M):

1. This appeal has been preferred by the minor daughter of deceased- Mukhtiar Kaur on account of inadequacy of compensation awarded by the Tribunal vide award dated 12.04.1994.

2. Brief facts of the case are that the accident in question took place on 05.02.1992 when Amarjit Singh (since deceased) along with his wife Mukhtiar Kaur (deceased) were going to village Nathowal Jaded, Faridkot after meeting their relative. Brother-in-law of Amarjit Singh was accompanying them on a separate scooter. When they reached ahead of bus stop, Sidhwan Khurd on the Ferozepur-Ludhiana Road, a bus bearing Registration No.PJG-7507 of Pepsu Road Transport Corporation, being driven by respondent No.1 came from opposite direction at a high speed and struck against the scooter of Amarjit Singh. As a result of which, both the occupants of the scooter died at the spot.

3. The Tribunal held that deceased were in their 30's at the time of accident and assessed the pecuniary dependency of the claimants as Rs.50,000/- per annum on account of death of

both the deceased i.e. Amarjit Singh and Mukhtiar Kaur. After applying multiplier of 10, the Tribunal has assessed the compensation to be Rs.5 lacs and made respondents No.1 to 3 liable to make the payment.

4. Learned counsel for the appellants has stated that the compensation awarded by the Tribunal is on lower side. No amount has been added towards funeral expenses and loss of estate and multiplier of 25 should have been applied.

5. I have heard learned counsel for the parties.

6. The Tribunal has not bifurcated the salary of the deceased and provided a lumpsum amount of Rs.5 lacs on account of death of both the deceased. Therefore, it is required to specifically deal with the income of the deceased separately. It has been stated by Avtar Singh-AW2 and Joginder Kaur-AW3 in their evidence that both Amarjit Singh and Mukhtiar Kaur were working in Canada. Amarjit Singh was plying a taxi whereas Mukhtiar Kaur was doing a job in restaurant. But no evidence was produced with regard to their work. So, monthly income of deceased i.e. Amarjit Singh can be taken to be that of a labourer which in my view can be assessed at Rs.1500/- per month.

7. The deceased was in his 30's, so his age can be taken to be 30 years, therefore, increase on account of future

prospects to the tune of 40% in view of **National Insurance Company Limited vs Pranay Sethi, 2017 SCC 1270** can be added to the monthly income of the deceased. In this way, the income of the deceased would come out to be Rs.2100/- per month i.e. Rs.25,200/- per annum.

8. Keeping in view the composition of family of the deceased and as per ratio laid down in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, deduction to the tune of $1/4^{th}$ can be applied towards personal expenses of the deceased. In this manner, annual dependency would come out to be Rs.18,900/- (2100-525=1575x12 = 18,900).

9. The deceased was aged about 30 years at the time of accident and in view of ratio laid down in **Smt. Sarla Verma's case (supra),** multiplier of 17 is to be applied. In this manner, dependency would come out to be Rs.3,21,300/- (18,900x17). An additional amount of Rs.30,000/- can be added towards loss of estate and funeral expenses in view of **Pranay Sethi's case (supra)**. In this way, total amount of compensation comes out to be Rs.3,51,300 (3,21,300+30,000).

FAO No.2098 of 1994 (O&M):

This appeal has been preferred by parents and minor daughter of Amarjit Singh on account of inadequacy of compensation awarded by the Tribunal vide award dated 12.04.1994.

10. In this case, deceased was Mukhtiar Kaur, wife of Amarjit Singh who died in the same accident. The claimants before the Tribunal claimed that deceased Mukhtiar Kaur was doing a job in restaurant in Canada but no evidence was produced regarding her income. Therefore, she would be considered to be a housewife. In case of housewife, the criteria specified in clause (6) of Second Schedule referred to Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') has to be looked into. The contribution made by the wife to the family is invaluable and cannot be computed in terms of money.

11. The monthly notional income of Mukhtiar Kaur, deceased can be assessed as Rs.1000/- per month. In case of housewife, deduction towards personal expenses is not to be made in view of ratio laid down by Hon'ble Apex Court in **Lata Wadhwa vs State of Bihar, 2001(4) RCR (Civil) 673.** Therefore, annual income of the deceased has to be taken as Rs.1000x12= Rs.12,000/-. In evaluating notional income of deceased housewife, 1/3rd deduction towards personal expenses while computing dependency of the family is not to be

made in view of **Paramjit Singh vs Dilbag Singh @ Bagga, 2014(4) RCR (Civil) 895 (DB).** Since the deceased was 31 years of age, multiplier of 16 would be just and appropriate in view of ratio held in **Sarla Verma's case (supra).** By applying multiplier of 16, the amount of compensation comes out to be Rs.12,000x16= Rs.1,92,000/-. An amount of Rs.50,000/- each to the minor children towards loss of love and affection can be awarded and an amount of Rs.30,000/- towards funeral and transportation expenses have to be awarded under the conventional head in view of **Pranay Sethi's case (supra)**. In this way, total compensation comes out to be Rs.3,22,000/- (1,92,000+1,00,000+30,000).

12. FAO No.2097 of 1994 and FAO No.2098 of 1994 have arisen due to death of family members of the claimants herein, therefore, total compensation for the deceased would come out to Rs.6,73,300/-. The enhanced amount i.e. Rs.1,73,300/- would carry interest @ 7.5% per annum from the date of filing of claim petition till final realization. Liability to pay shall remain the same.

13. The issue of liability to pay compensation was raked up in RSA No.1138 of 1998 (O&M) titled 'United India Insurance Company Limited vs Pepsu Road Transport Corporation and

others' wherein it was decided on 25.02.2019 in the following manner:-

> *"Now the stage is set for answering the questions of law.*
>
> *In the considered view of this Court, the suit for declaration was not maintainable against the insurance company. On revocation of the insurance contract, the plaintiff was only entitled to file a suit for damages for wrongful termination of the contract as provided in Section 14 of the Specific Relief Act, 1963. Accordingly, question No.1 is answered in favour of the appellant and against the plaintiff-respondent.*
>
> *Similarly, it is declared that the insurance contract of indemnity as defined in Section 124 of the Contract Act and as such, these contracts can be terminated and the insurance company or the owner has option to walk out of the contract by giving sufficient notice enabling the other party to take appropriate steps. The insurance contracts*

cannot be held to be not terminable before the expiry of the term.

Accordingly, second question of law is also answered in favour of the defendant-appellant.

Hence, judgment of the First Appellate Court is set aside and that of the trial Court is restored.

The pending miscellaneous application, if any, shall stand disposed of in view of the above said judgment.

Regular Second Appeal is allowed."

14. Perusal of aforesaid judgment would show that United India Insurance Company has been absolved of its liability to answer the claim of the claimants, therefore, Pepsu Road Transport Corporation shall be liable.

15. Normal consequence to follow in lieu of decision of RSA No.1138 of 1998 on 25.02.2019.

03.04.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No