

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 6492 of 2011 (O&M)
Date of decision : 24.4.2019
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Smt. Veena Vidyarthi and another
.....Appellants

VS.

Darshan Singh @ Billu and others Respondents

2) FAO No. 6493 of 2011 (O&M)

Smt. Veena Vidyarthi and another
.....Appellants

VS.

Darshan Singh @ Billu and others Respondents

3) FAO No. 6494 of 2011 (O&M)

Smt. Veena Vidyarthi and another
.....Appellants

VS.

Darshan Singh @ Billu and others Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: Mr. Y.P. Khullar, Advocate for the appellants.

Ms. Madhu Sharma, Advocate for respondent
-Insurance company

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H. S. Madaan, J. (Oral)

By this common judgment, I intend to dispose of three appeals i.e. bearing FAO No. 6492 of 2011, FAO No. 6493 of 2011 and FAO No. 6494 of 2011 all having title 'Smt. Veena Vidyarthi and another vs. Darshan Singh @ Billu and others', as all the three appeals have arisen out of the same award.

Briefly stated, facts of the case are that on account of death of six persons, namely, Puneet Yadav, Bisham Yadav, Monika Vidyarthi, Master Kanishk Vidyarthi, Ms. Urvashi Vidyarthi and Vishal Vidyarthi, in a motor vehicular accident, which took place on 25.9.2007 at about 5.15 A.M., in the area of near bus stand, village Dau Majra, statedly on account of rash and negligent driving of Truck No. PB-12F/9281, by respondent No.1 Darshan Singh @ Billu, the legal representatives of all the six deceased, had filed petitions under Section 166 of the Motor Vehicles Act, 1988, claiming compensation. In those petitions, they had impleaded Darshan Singh @ Billu – driver-cum-owner and Oriental Insurance Company Ltd., Nangal, District Ropar – Insurer of the truck in question, as respondents.

The respondents had put in appearance and contested the claim petitions. However all the claim petitions were accepted and compensation of Rs.4,16,000/- was awarded in respect of death of Puneet Yadav, Rs.4,70,000/- was awarded in respect of death of Bisham Yadav and Rs.4,70,000/- was awarded in respect of death of Vishal Vidyarthi and Rs.50,000/- each on account of death of Smt.

Monika Vidyarthi, Master Kanishk Vidyarthi and Miss Urvashi Vidyarthi, alongwith interest @ 6% per annum, from the date of petition till realization, finding both the respondents to be liable jointly and severally, vide consolidated award dated 13.5.2011 passed by Motor Accident Claims Tribunal, Palwal.

The appellant-claimants being of the view that compensation awarded by the Motor Accidents Claims Tribunal, Palwal, was on lower side, have approached this Court by way of filing present appeals, notice of which was given to the respondents.

The Insurance company has contested those appeal.

I have heard, learned counsel for the parties, besides going through the record.

As per version of the claimants, deceased Master Kanishk Vidyarthi, was aged about 10 years and was studying in 3rd class. He was a brilliant student. Whereas, Miss. Urvashi Vidyarthi, was aged about 4 years and was studying in KG class. As regards, Mrs. Monika Vidyarthi, she was a graduate, taking private tutions, earning Rs.10,000/- per month. With their untimely demise, petitioners No. 1 and 2, who are grandparents and petitioners No. 3 and 4 who are paternal aunts of Master Kanishk Vidyarthi and Miss Urvashi Vidyarthi and petitioners No. 1 and 2, who are parents-in-law and petitioners No. 3 and 4, who are sister's-in-law of Mrs. Monika Vidyarthi, have been deprived of their love and affection, as well as social obligations and responsibility.

The Tribunal has observed that claimants No. 3 and 4 being

paternal aunts i.e. father's sisters of the deceased children and sister's-in-law of Monika Vidyarthi i.e. husband's sisters, are not their legal heirs or dependent, as such are not entitled to any compensation.

The Tribunal has observed that Smt. Veena Vidyarthi and Ramesh Chand Vidyarthi, being grandmother and grandfather of deceased Master Kanishk Vidyarthi and Miss Urvashi Vidyarthi, and parents-in-law of deceased Monika Vidyarthi and Smt. Madhvi Sharma and Smt. Saiphali Kaushik, being paternal aunts of deceased Master Kanishk Vidyarthi and Miss Urvashi Vidyarthi and sister's-in-law of Monika Vidyarthi, were not their legal heirs and dependent upon them, as such were entitled to compensation of Rs.50,000/- only in terms of Section 140 of the Motor Vehicles Act. In my considered view, the Tribunal fell in error in coming to such conclusion.

Learned counsel for the appellants has referred to judgment *United India Insurance Company Limited vs. Parlad Rai and others 2010 (4) RCR (Civil) 153*, by a Coordinate Bench of this Court, wherein it was observed that when a married woman dies in a motor accident, her parents-in-law are entitled to compensation and the contention that parents-in-law could not be said to be dependents on the deceased was not tenable, since the woman is an unpaid home maker and it is not unusual that a daughter-in-law takes care of the parents-in-law in her husband's house. It was further observed that presence of a daughter-in-law and the value of her services could never be under-estimated in Indian society. Thus the view taken by the Tribunal with regard to petitioner-claimants Smt. Veena Vidyarthi

and Ramesh Chand Vidyarthi was not correct. Whereas, with respect of Smt. Madhvi Sharma and Smt. Saiphali Kaushik, sister's-in-law of the deceased, one may not differ with the Tribunal in that regard.

Now, the question arises, as to how much compensation the claimants No. 1 and 2 are entitled to on account of death of their daughter-in-law Mrs. Monika Vidyarthi. Mrs. Monika Vidyarthi was stated to be aged about 34 years, having qualification of graduation and taking tuitions earning Rs.10,000/- per month. Though the petitioner-claimants have not been able to bring enough cogent and convincing evidence in that regard, but then a married woman does contribute to the family by doing household chores including cooking, cleaning utensils, washing clothes and managing the household affairs and it is difficult to quantify such services rendered by a household lady to the family, however, a reasonable amount is to be taken in that regard. In *Lata Wadhwa and others Vs. State of Bihar and others, 2001(4) RCR(Civil) 673*, the Apex Court had evaluated the contribution of a household wife at Rs.3,000/- per month. It was an accident, which took place in 1989. In a judgment passed by a Co-ordinate Bench titled *Cholamandalam MS General Insurance Co. Ltd. Versus Lakhmi Chand and Ors., 2015(4) PLR 405*, the notional income for a housewife was taken to be Rs.5,000/- and no addition was made towards future prospects. In another FAO-1274 of 2014 having title *Manphool & others Versus Anil and others* decided on 14.3.2018 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.5,200/- per

month. In FAO-5627 of 2014 having title **Brahmanand and others Versus Rajesh Kumar and others** decided on 7.12.2016 by a Co-ordinate Bench of the Court, the income of a housewife was assessed to be Rs.6,000/- per month. Keeping in view the facts and circumstances of the case, the age of the deceased, the economic background of the parties, I find that it would be proper and appropriate if the value of the services rendered by deceased Mrs. Monika Vidyarthi to the family is quantified as Rs.6,000/- per month. In that way, the annual contribution comes out to Rs.72,000/- (6,000 x 12).

In a judgment by a Division Bench of this Court reported **Paramjit Singh and another vs. Dilbagh Singh @ Bagga and others 2014 (4) RCR (Civil) 895**, it was observed that no deduction is to be made from the amount taken as services rendered by the deceased to the family. For ready reference, relevant paragraph of the judgment is reproduced as under:-

“14. We may hasten to add that in all those cases, referred to above, in which 1/3rd cut has been applied, no reasoning has been given by the learned Single Judge rather in the cases, referred to above, in which 1/3rd cut has not been applied, the learned Single Judge had observed that Rs.3,000/- per month is assessed as monthly value of her services and not her monthly income and, therefore, the concept of deduction cannot be applied. In view

of the aforesaid discussion, we are of the considered view that while calculating the notional income of the housewife, the entire income should be taken as dependency of the legal heirs without applying any cut much-less 1/3rd, as has been done in certain cases.”

Keeping in view the age of the deceased to be 34 years, as entered in her post mortem report Exhibit P-13, in view of the judgment *Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77*, the multiplier of 16 is to be used. Thus the compensation comes out to Rs.11,52,000/- (72,000 x 16). The claimants are entitled to get Rs.15,000/- under the head funeral expenditure and Rs.15,000/- towards loss of estate. Thus the total compensation comes out to be Rs.11,82,000/- (11,52,000 + 30,000). The Tribunal has awarded compensation of Rs. 50,000/-.

Accordingly, the claimants No. 1 and 2 are entitled to get additional compensation of Rs.11,32,000/- (Rs.11,82,000 – Rs.50,000), in equal shares. The claimants would also be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of the appeal till actual realization. The other terms and conditions with regard to apportionment and payment shall remain the same as in the original award. With such modification, FAO 6494 of 2011 is allowed with costs.

As regards, death of Master Kanishk Vidyarthi and Miss Urvashi Vidyarthi, their grandparents i.e. Smt. Veena Vidyarthi

paternal grandmother and Ramesh Chand Vidyarthi paternal grandfather, are definitely entitled to get compensation being their legal representatives.

Learned counsel for the appellants has referred to judgment **Kishan Gopal and another vs. Lala and others 2013 (4) RCR (Civil) 276**, by the Apex Court, wherein while dealing with death of child aged about 10 years, who was assisting his parents in agricultural occupation, it was observed that had the deceased child been alive he would have contributed substantially to the family of the appellants by working hard and his notional income was taken to be Rs.30,000/- per annum and multiplier of 15 was applied, arriving at compensation of Rs.4.50 lakhs and Rs.50,000/- was awarded under the conventional Heads.

In this case, also I find that it would be just proper and appropriate, if compensation of Rs.4.50 lakhs each is awarded with respect to death of both Master Kanishk Vidyarthi and Miss Urvashi Vidyarthi, in addition to giving of Rs.15,000/- each under the head funeral expenditure and Rs.15,000/- each towards loss of estate. Thus the total compensation comes out to be Rs.4,80,000/- each (4,50,000 + 30,000). The Tribunal has awarded compensation of Rs. 50,000/- each.

Accordingly, the claimants No. 1 and 2 are entitled to get additional compensation of Rs.4,30,000/- each (Rs.4,80,000 – Rs.50,000) in equal shares, with respect to the death of both grandchildren. The claimants would also be entitled to get interest @ 7.5%

per annum on the additional compensation from the date of filing of the appeal till actual realization. The other terms and conditions with regard to apportionment and payment shall remain the same as in the original award. With such modification, the FAO 6492-2011 and FAO 6493-2011 are allowed with costs.

24.4.2019
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(H.S. Madaan)
Judge

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