

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4222 of 2015 (O&M)
Date of decision : 03.05.2019

Mohinder Singh and another

.... Petitioners

versus

State of Punjab and ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Aashna Gill, Advocate (Amicus Curiae) and
Mr. L.S. Lakhanpal, Advocate, for the petitioners

Ms. Ambika Sood, DAG, Punjab

ARUN MONGA, J.

Petitioners herein, *inter alia*, seek issuance of a writ in the nature of *mandamus* directing the respondents to pay compensation to them for custodial death of their daughter Jaspreer Kaur, who died in police custody on 30.09.2012 at Police Station Kot Bhai, District Sri Muktsar Sahib, Punjab.

2. Succinctly the facts. Husband of the deceased-Jaspreet Kaur committed suicide having consumed some poisonous substance. Based on the complaint made by his father, FIR No. 76 dated 29.09.2012 was registered under Section 306 of Indian Penal Code, 1860 (for short 'IPC'). Pursuant thereof, the deceased was arrested on the same day and brought into police lock up on the allegation that her husband, suspecting her to be involved in an illicit relationship, had committed suicide. While in police custody, the deceased on 30.09.2012 requested that she wanted to take a bath. She was permitted to use bathroom but when she came out, her mouth was frothing and she collapsed. She was taken to Civil Hospital, Gidderbaha, where she died.

3. Pursuant to a preliminary inquiry (Annexure P/2), an FIR No. 82 dated 10.11.2012 under Section 304-A of IPC (Annexure P-3) was registered against 4 persons namely, Inspector Kuldeep Singh (the then SHO, PS Kot

Bhai), ASI Daljeet Singh, HC Tarsem Singh and HC Amarjeet Singh.

4. Judicial inquiry under Section 176 of Criminal Procedure Code, 1973 was conducted by Judicial Magistrate First Class, Malout and a report dated 08.02.2013 (Annexure P-4) was furnished. Subsequently, Superintendent of Police, Sri Muktsar Sahib, having taken the judicial inquiry report into account, submitted his report dated 04.09.2013 (Annexure P-5) wherein only HC Amarjeet Singh was found guilty of negligence in performance of his duty. Net result is that Jaspreet Kaur committed suicide while in police custody owing to the negligence of State Police.

5. Deceased left behind two minor children, namely, Sukhman Singh (son) Parveen (daughter), aged 9 years and 7 years, respectively. Her children are living with their grandparents i.e. the petitioners, who are working as labourers and have no other source of income.

6. The petitioners submitted representation dated 15.12.2014 (Annexure P-6) to the SSP, Sri Muktsar Sahib seeking compensation for the death of their daughter in police custody but to no avail. Hence the present writ petition.

7. In their return, respondents submit that the deceased had committed suicide and it was not a case of custodial death. On an inquiry conducted by SP, Sri Muktsar Sahib, HC Amarjeet Singh had been found negligent in performance of his duty and FIR No. 82 dated 10.11.2012 under Section 304A IPC was registered. The delinquent officer is undergoing trial. Till the time the trial is pending, the liability of State, if any, cannot be determined. The claim of the petitioners has been rejected on the ground that they have concocted the whole story to make out a case for compensation.

8. I have gone through the pleadings and heard learned counsels for the parties.

9. It is the conceded position that the deceased died while in custody of the police on 30.09.2012. A perusal of inquiry reports of DSP, Gidderbaha, JMIC, Malout and the SP, Sri Muktsar Sahib (Annexures P-2, P-4 and P-5) shows that even though the identity of the persons guilty of negligence for the death of Smt. Jaspreet Kaur was in dispute but the fact that she died in police custody due to negligence of officials is not in dispute.

10. My attention has been drawn to order dated 10.05.2017, whereby this court had issued interim direction for grant of interim compensation of Rs. 3 lacs to be paid to the petitioners for the welfare of the minor children. The payment was to be made within one month of the receipt of certified copy of the order. Acknowledgment of the payment was made vide order dated 25.09.2017.

11. The learned Amicus Curiae places reliance on a judgment rendered by Hon'ble Apex Court in case titled as '**Dy. Commr., Dharwad, Dist. Dharwad and others vs. Shivakka and others**' reported as **2012(2) RCR (Criminal) 452** and on the judgment passed by a Coordinate bench of this Court in case titled as '**Harcharan Singh vs. State of Punjab and others**' bearing **CWP No. 4273 of 2003**, decided on 24.04.2014 wherein the Courts granted compensation to the dependents of those who died while in custody.

12. In my opinion, the view taken in these judgments relied upon by the petitioners is applicable to the instant case and I am inclined to award them compensation for the custodial death of their daughter and also for the welfare of the children. The next question is as to the quantum of compensation.

13. Per ratio of judgment rendered by a coordinate Bench of this Court in '**Phoolwati vs. State (Union Territory of Chandigarh) and others**' reported as **2008(1) RCR (Criminal) 167**, the multiplier, as provided in Motor Vehicles Act, 1988, can be applied to cases of custodial death, for providing

compensation to the dependents of the deceased.

14. To calculate the compensation to be awarded to the dependents of the deceased, the Hon'ble Apex Court has laid down various principles in its judgments. Addition of income for future prospects, deduction of personal and living expenses, selection of multiplier, various heads of compensation and the formula for computation of compensation have been explained and settled by the Hon'ble Supreme Court of India in its judgments reported as '**Sarla Verma and others v. Delhi Transport Corporation and another**' 2009(3) RCR (Civil) 77 (SC) and '**National Insurance Company Limited v. Pranay Sethi and ors.**' 2017 (4) RCR (Civil) 1009 (SC). Relevant paras thereof, are reproduced hereunder:-

“Sarla Verma and Others v. Delhi Transport Corporation and another:-

21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

National Insurance Company Limited v. Pranay Sethi and Ors:-

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

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(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.

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(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.

15. Late Smt. Jaspreet Kaur died in police custody when she was about 30-35 years of age as is reflected from the judicial inquiry report dated 08.02.2013 (Annexure P-4), submitted by learned Judicial Magistrate 1st Class, Malout u/s 176 of Criminal Procedure Code, 1973. Therefore, the multiplier of 16 is to be applied in view of the *Sarla Verma* judgment, *ibid*.

16. For the assessment of monthly income of the deceased, reliance may be placed on judgment rendered by a Coordinate Bench of this Court in FAO No. 218 of 2014, titled as 'United India Insurance Co. Ltd. vs. Sube Singh and others' decided on 15.01.2014, wherein it has been held that a house wife has to be considered to be at higher level than a mere skilled worker and it would not be unreasonable to hold her monthly income at a higher figure. The said judgment was challenged in an SLP which was dismissed and has since attained finality. In my opinion, it would be fair and reasonable to assess the

income of Jaspreet Kaur @ Rs.9,000/- per month.

17. By applying the aforesaid principles and formula, the amount of compensation payable in the present case works out to as under:-

Sr. no.	Head	Amount
i	Monthly Income	Rs. 9,000/-
ii	Future Prospects @ 40%	Rs. 3,600/-
iii	Total monthly income (i+ii)	Rs. 12,600/-
iv	Deduction towards personal expenses (1/3 rd of iii)	Rs. 4,200/-
v	Monthly dependency of the petitioner (iii - iv)	Rs. 8,400/-
vi	Loss of income by applying multiplier (8,400 X 12 X 16)	Rs. 16,12,800/-
vii	Funeral Expenses	Rs. 15,000/-
viii	Loss of Estate	Rs. 15,000/-
ix	Total (vi to viii)	Rs. 16,42,800/-

18. Present writ petition is allowed. Respondents are directed to disburse the compensation of Rs. 16,42,800/- as quantified, within a period of three months from the date of receipt of certified copy of this order, failing which, the petitioners shall be entitled to a further compensatory penal interest @ 15% per annum from expiry of three months until the actual payment is made. The amount of interim compensation already paid to the petitioners by virtue of order dated 10.05.2017 be deducted from the amount assessed above.

19. The present petition is filed by the parents of the deceased, Smt. Jaspreet Kaur, showing dependency of the children of the deceased namely, Sukhman Singh (son) Parveen (daughter), aged 9 years and 7 years, respectively. In view of the dependency, the amount of compensation (Rs. 16,42,800/-) shall be apportioned in the following manner:-

Sukhman Singh (Son) & Parveen (Daughter) = 35% each

Mohinder Singh (Father) = 15%

Angrej Kaur (Mother) = 15%

Amount of compensation payable to the children of the deceased shall be deposited in form of FDR's in their names, in a Nationalized Bank till they attain majority. However till then, the petitioners would be entitled to withdraw interest accrued on the said FDR's for the welfare of the children.

20. In the parting, this Court appreciates the valuable services rendered by the learned Amicus Curiae Ms. Aashna Gill, Advocate.

May 03, 2019
smriti/R

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No