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

FAO No. 5523 of 2015 (O&M)
Date of decision: April 10, 2019

Gurcharan Singh and others
...Appellants
Versus
Shalinder Kumar Malhotra and others
...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. J.S. Cooner, Advocate,
for the appellants.

Mr. Paul S. Saini, Advocate,
for respondent No.3—Insurance Company.

JAISHREE THAKUR, J.

This appeal seeks to challenge the award dated 24.2.2015 passed by the Motor Accident Claims Tribunal, Amritsar, wherein the appellants herein have been allowed compensation of ₹6,34,844/- on account of death of Ravel Singh.

In brief, the facts are that on 3.2.2014, deceased Ravel Singh, along with his grand son Sukhdeep Singh, was going from his house to Mallian on his bicycle. Gurcharan Singh son of Ravel Singh (claimant No.1) was following them on his separate bicycle and his wife Baljit Kaur was sitting on the carrier of the bicycle. When they reached near Dana Mandi, Jandiala Guru, they (Ravel Singh and Sukhdeep Singh) were hit by a truck bearing registration No. PB-30-G-1811 from the behind, being driven by respondent No. 2 in rash and negligent manner, as a result of which both of them fell down and suffered multiple and grievous injuries and ultimately succumbed to the injuries on the spot. It was alleged that the accident took place due to the rash and negligent driving of respondent No.2 and consequently FIR 29 dated 3.2.2014, under Sections 304-A, 279, 427 IPC came to be lodged with the Police Station Jandiala Guru, Amritsar. With these averments, claim petition was filed by the appellants, claiming that they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was was 47 years old, who was self employed as he was selling *Gania (chains)* and was earning ₹14,000/- per month.

The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable etc. Issues were framed and thereafter evidence was led by the parties. In order to substantiate the claim, appellant No.1 himself appeared as PW1 and tendered into evidence his affidavit Ex. PW1/A. On the other hand, respondent No.2 appeared as RW1 and tendered into evidence his affidavit Ex. RW1/A. Learned counsel for respondent No.3 tendered into evidence a copy of the insurance policy Ex. R1 and thereafter closed the evidence.

After scrutiny of the evidence brought on record, the Tribunal held that the the accident was the result of rash and negligent driving of respondent No. 2 and on assessment of the facts and evidence before it allowed compensation of ₹6,34,844/- which has been now challenged in the instant appeal.

Learned counsel for the appellants submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the compensation amount awarded to the appellants deserves to be enhanced. It is submitted that the Tribunal has wrongly assessed the income of deceased as ₹4,000/- per month as a casual labourer, whereas, as claimed, the deceased was earning ₹14,000/- per month by selling *Gania (chains)* at Gurudwara Sahib.

On the other hand, learned counsel appearing on behalf of respondent No.3—Insurance company submits that adequate amount of compensation has been awarded by the Tribunal and no interference is called for in the instant appeal.

I have heard learned counsel for the parties and perused the impugned award and find that there is no scope for further enhancement of compensation.

The appellants in their claim petition, claimed that the deceased was 47 years of age and he was earning ₹14,000/- per month by selling *Gania (chains)* at Gurudwara Sahib. However, the appellants failed to produce any documentary proof either with regard to the income or the age of the deceased. Under the circumstances the Tribunal, after examining the evidence produced by the respective parties held that the deceased was aged 52 years as described in the post mortem report Ex. P.2 and while treating him as a casual labour rightly held that he would be earning ₹4000/- per month. The Tribunal, while awarding the compensation observed as under:-

> *"In **Rajesh and others Versus Rajbir Singh and others 2013 (3) Civil Court Cases, 015,** it has been held by Hon'ble Supreme Court of India that where deceased was self employed or engaged on fixed wages, increase of income for future prospects should be 50% of actual income (after deduction of*

> *tax) for persons below 40 years; 30% for age group of 40 to 50 year and 15 percent for age group of 50 to 60 years and no additional thereafter. The deceased in the present case has been proved to be of the age of 52 years. <u>As such, an addition of 15% is to be made towards future prospects.</u> Doing that, monthly salary of deceased is worked out to be Rs. 4,600/- (Rs. 4,000/-+Rs. 600/-). The deceased left behind claimant No.1, his son, claimant No.2 his widow; claimants No.3 and 4, his daughters, claimant No.5 his father, and claimant No. 6, his mother. Claimant No.1 is major and is married. Claimants No. 3 and 4, who are daughters of deceased, are also major but it is not disclosed whether they were married or not. So, they cannot be considered fully dependent upon the deceased. In terms of ratio of authority* ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and Anr. 2009 (3) Recent Civil Reports,*** *77, by Hon'ble Supreme Court of India, where number of dependent family members is 2 to 3, deduction on account of personal expenses from the income should be 1/3rd. Doing that, the dependency of claimants comes out to ₹3,066.60. By rounding off it is considered as Rs. 3,067/- per month, annual dependency Rs. 36,804/-. In view of this authority, when the deceased is in the age group of 51 to 55 years, then the multiplier of '11' is to be applied. Using that multiplier, the compensation payable to the claimants comes to Rs. 4,04,844/-.*

From the perusal of the impugned award, it is clear that the Tribunal, after following the law laid down in the judgments referred to above, granted 15% increase towards future loss of earning of income (though as per the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009**, 10% increase towards is to be granted where the deceased is between the age of

50 to 60), deducted 1/3rd towards the personal and living expenses of the deceased, applied the multiplier of 11, and under other conventional heads (i.e. ₹one lac on account of loss of consortium, ₹25,000/- towards funeral expenses and ₹5,000/- towards loss of estate), awarded the above mentioned amount of compensation. Therefore, on a composite reading of the award, this Court does not finds any ground to interfere with the impugned award.

Dismissed.

April 10, 2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No