

R-352
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5204-2006 (O&M)
Date of decision : 23.01.2024

Chhailu & Anr. ... Petitioner(s)

Versus

Ashok Kumar & Anr. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vipul Sharma, Advocate (*Amicus Curiae*) and
Mr. B.K. Bargi, Advocate for the appellants.

Mr. V. Ramswaroop, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

1. The present appeal was dealt with alongwith the appeal filed by the Insurance Company i.e. FAO-3729-2006 vide order dated 19.02.2014 passed by the Coordinate Bench of this Court wherein it was held as under :

“As regards the appeal for enhancement of compensation, the learned counsel for the respondents No.1 and 2 has argued that the deceased was 23 years old and the student of B.A. and had already passed B.A.- Ist year.

Learned counsel for the appellant-insurance company has argued that in our country it is not certain that a person who has done B.A.- Ist year would even got a job and consequently considering the same income of an

unskilled labourer cannot be termed to be unfair.

In my opinion, it would be most appropriate if in the present case the minimum wages of a semi-skilled worker is taken. Admittedly, in the year 2004 the minimum wages for a semi-skilled worker was Rs.2740/-. Consequently, I take his income as Rs.2740/- p.m.

Learned counsel for the respondent Nos.1 and 2-claimants has further argued that multiplier of 18 has to be applied as per the age of the deceased and has relied upon Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298. Learned counsel for the respondents No.1 and 2 has further argued that under conventional heads only an amount of Rs.10,000/- has been awarded and has relied upon the decision of the Hon'ble Supreme Court in Vimal Kanwar and others vs. Kishore Dan and others, (2013-3) PLR 776.

Keeping in view the entire conspectus of facts, I award Rs.1 lac to the respondent No.2-mother on account of loss of love and affection. I further hold that multiplier of 15 has to be applied instead of 8 in view of the observations made by this Court in F.A.O. No.5181 of 2010, titled as Nanak Singh and another vs. State of Punjab and another, decided on 17.01.2014. I further award Rs.10,000/- more towards funeral expenses and transportation. It is made clear that all the enhanced amount shall be paid along with the same rate of interest as awarded by the Tribunal from the date of filing of the claim petition till the date of realization. Apart from the individual amount awarded, apportionment and management of the compensation would be as per the

direction of the Tribunal.

Learned counsel for the respondents No.1 and 2 has further argued that the future prospects has also to be added in the income. He has relied upon two Single Bench judgments in Chander Pati and another vs Jitender Kumar and others, 2013(4) PLR 290 and Jai Parkash alias Parkash and another vs Mohammad Yusuf and others, 2013(1) PLR 772, to contend that this Court had awarded 50% for future prospects in Chander Pati and another' case (supra), and 30% for future prospects in Jai Parkash alias Parkash and another' case (supra).

Learned counsel for the appellant-Insurance Company has argued that in a case where there is some established income, future prospects may be granted but where the income is entirely notional, there would be no occasion to grant future prospects. He has further argued that deduction of 1/2 has to be applied and has relied upon the judgment in case Rekha Rani and another v. Ranjit Singh and another, 2013(3) R.C.R. (Civil) 770.

Learned counsel for the respondents No.1 and 2 has countered by arguing that if this premise is correct and no future prospects can be granted because the income is notional, then by the same logic no deduction can be allowed on notional income.

I find that this question cannot be decided in motion hearing and consequently, this appeal bearing FAO No.5204 of 2006 deserves to be admitted, and in view of difference of opinion which has surfaced after the decision in Rekha Rani and another' case (supra) on the one hand, and Chander Pati and another' case (supra) and Jai Parkash alias Parkash and another' case (supra)

on the other, the matter is referred to the Division Bench. The question now arises as to whether any amount should be paid to the respondents No.1 and 2-claimants at this stage when they require it most for their livelihood. In my opinion, subject to the decision of the larger bench it would be appropriate to immediately grant to the respondents No.1 & 2-claimants atleast the compensation now computed after making the deduction of 50% as canvassed by the learned counsel for the respondents No.1 & 2-claimants.

Registry is directed to place this matter before Hon'ble the Chief Justice to constitute a Bench. It is requested that in view of the fact that this Court is endeavouring to decide long pending MACT cases expeditiously, Bench may be constituted as early as possible."

2. It is an admitted case of the parties that 50% of the amount of compensation as directed vide order dated 19.02.2014 already stands released to the claimant-appellants. The question in the present case only remains regarding the payment of future prospects.

3. It has been brought to the notice of this Court that the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 and hence there would be no question of future prospects and all other heads had been dealt with by the Coordinate Bench vide order dated 19.02.2014.

4. Learned *amicus curiae* and Mr. B.K. Bagri, Advocate appearing on behalf of the appellants have relied upon the judgment of the Hon'ble Supreme Court in the case of **Ram Murti & Ors. Vs. Punjab State**

Electricity Board [2023 ACJ 631] wherein it has been held as under :

“7. The provisions of Section 140 which formed a part of Chapter 10 of the Motor Vehicles Act 1988 were omitted by Act 32 of 2019. Simultaneously, Chapter 11 was substituted of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5,00,000/- and in the case of grievous hurt of Rs.2,50,000/-.

8. We are inclined to give the appellants the benefit of the beneficial provisions which have been enacted by Parliament. Hence, in modification of the order of the High Court, we direct that the appellants shall be entitled to an amount of Rs.5,00,000/- as compensation. However, if the amount of Rs.50,000 which has been awarded by the High Court has already been paid over, the balance (or the entirety of Rs.5,00,000/- if no amount has been paid) shall be paid over to the appellants by 30 November 2022.”

5. Learned counsel would further contend that drawing parity from the aforesaid judgment, the claimant-appellants would also be entitled to at least Rs.5,00,000/-.

6. Learned counsel for respondent No.2-Insurance Company has contended that the judgment in the case of **Ram Murti** (supra) is not applicable in the present case and that that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

7. Heard the learned counsel for the parties.

8. Vide the Motor Vehicles (Amendment) Act, 32 of 2019 Chapter X stands omitted and substituted by Chapter XI. Section 163-A falls in Chapter X of the unamended Motor Vehicles Act, 1988 and the same has now been replaced by Section 164 and in view thereof the judgment of the Hon’ble Supreme Court in the case of **Ram Murti** (supra) would be fully applicable in the present case.

9. In view of the above, the present appeal is disposed off and the amount of compensation is enhanced to Rs.5,00,000/-. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimant-appellants as directed by the Tribunal. Accordingly, the award passed by the Tribunal is modified. Pending applications, if any, also stand disposed off.

23.01.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO