

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5762-2010 (O&M)
Date of Decision: April 16, 2024

Arjinder Kaur and another
...Appellants

VERSUS

Balbir Singh and another
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.K.S.Rekhi, Advocate
for the appellants.

Mr.Vikram Anand, Advocate
for respondent No.1.

Mr.Paul S. Saini, Advocate
for respondent No.2.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, on account of death of Harpreet Kaur, in a motor vehicular accident, which took place on 20.10.2003.

The facts germane, to be noticed, are as follows:-

That, on 20.10.2003, Harpreet Kaur along with her sister Ranjit Kaur and her friend Ritika, was returning to her house from Putlighar area. When she reached near dairy, in the area of Chhota Islamabad, respondent No.1- Balbir Singh alias Vicky, while driving his motorcycle bearing registration No.PB-02H-1469, came from opposite side and struck against Harpreet

FAO-5762-2010

Kaur, as a result whereof, she fell on the road and various injuries were caused to her, including head injury. Harpreet Kaur and Ritika, who had also sustained injuries, were shifted to hospital. Harpreet Kaur remained admitted in Amandeep Hospital from 20.10.2003 and expired on 04.12.2003. The accident had taken place due to rash and negligent driving of motorcycle driven by respondent No.1-Balbir Singh alias Vicky, as a result whereof, injuries were suffered on the person of Harpreet Kaur, which proved fatal. The deceased was unmarried/

In the claim petition, the deceased was asserted to be 25 years old, at the relevant time and she was a Teacher in Government Senior Secondary School and earning Rs.9500/- per month. So far as, assessment of age of the deceased is concerned, though, it has not been specifically worked upon by learned Tribunal, but however, suffice to consider the educational certificates of the deceased, coming on record, which states about the date of birth of Harpreet Kaur as 28.02.1978 and thus, considering the same, on the day of accident, the deceased was about 25 years old.

Learned Tribunal had appropriately considered the earnings of the deceased as Rs.9500/- per month, but however, considering her to be of marriageable age and taking into consideration, the fact of the deceased, ought to have got married soon, after making deduction to the extent of 1/3rd, on account of 'personal expenses', the multiplier applied was '7' and on the said basis, the annual loss of earnings were worked upon as Rs.5,31,972/-.

However, the compensation, so worked upon, do call for re-computation, as per the prevalent law.

FAO-5762-2010

So far as, age of the deceased is concerned, as observed aforesaid, she was 25 years old. Also, from the evidence on record, it stands established that she was a government Teacher and was earning Rs.9500/- per month, annul whereof, comes to be Rs.1,14,000/-. The extent of earnings have been so proved by way of examination of PW-4 Narinder Kumar, who had proved the last drawn pay certificate of the deceased, which is Ex.P43.

For the purposes of assessment of the compensation, as per *Pranay Sethi's case*, it is the income minus tax component, which ought to be taken into consideration. As per the prevalent tax slab, at the time of accident, the initial amount of Rs.50,000/- of the earnings was tax free. Further, tax was to the extent of 10% from the amount falling in the bracket of Rs.50000-60000/-, i.e. Rs.1000/-. Further, for the bracket of Rs.60000/- Rs.1,50,000/-, the tax slab was to the extent of 20%. However, in the present case, the residue income, after the bracket of Rs.60000/- onwards, was to the extent of Rs.54,000/-. Taking it to be so, the tax amount for this amount comes to be Rs.10,800/-. Thus, the total amount of tax works out to be $\text{Rs.1000} + 10800 = \text{Rs.11,800/-}$. After deducting the same, the annual income comes to be $\text{Rs.1,14,000} - 11,800 = \text{Rs.1,02,200/-}$.

However, on the count of 'future prospects', keeping in view the age of the deceased and being a Government employee, addition of 50% ought to be made, which is to the extent of Rs.51,100/-. Thus, the total income of the deceased works out to be $\text{Rs.1,02,200} + 51,100 = \text{Rs.1,53,300/-}$ per annum.

Undisputedly, the deceased was unmarried. Also, it is asserted

FAO-5762-2010

in the claim petition that deceased had resolved not to get married, as she was to look after her family. The father of the deceased was not doing anything. Moreover, he had died. Now, it was deceased Harpreet Kaur, who was to look after her mother and her younger brother, who was about 10-12 years, at the relevant time. Considering the same and the marital status of the deceased, the deduction, on the count of 'personal expenses', ought to be 50%, instead of 1/3rd. Thus, making this deduction, the loss of dependency comes to be Rs.153300-76650=Rs.76,650/-.

Considering the age of the deceased, the multiplier of '7', as applied by learned Tribunal, is erroneous. However, as per ***Sarla Verma's case***, the appropriate and suitable multiplier, to be applied is '18', and after application of the same, the loss of dependency, works out to be Rs.76650x18= **Rs.13,79,700/-**.

Besides the aforesaid amount, under conventional heads, as per ***Pranay Sethi's case (supra)***, the compensation, ought to be paid to the claimants, on the count of 'loss of consortium', 'loss of estate' and 'funeral expenses', which was stated to be to the extent of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. However, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation, on the aforesaid counts, works out to be, **Rs.48,400/-, Rs.18,150/- and Rs.18,150/-**, respectively.

As per '***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130***', all the dependents of the deceased/claimants, are entitled to 'parental', 'spousal' or

National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009
Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77

‘filial’ consortium, as required.

Besides the aforesaid, the medical bills have been duly proved, during the course of evidence and the total whereof, comes to be Rs.1,80,317/-. Thus, the aforesaid amount, on the count of medical expenditure, ought to be granted to the claimants.

Considering the same, the compensation payable to appellants-claimants, on account of death of Harpreet Kaur, is re-computed, as herein given:-

Loss of dependency	:	Rs.13,79,700/-
Loss of consortium	:	Rs.96,800/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Medical Bills	:	Rs.1,80,715/-
Total	:	Rs.16,93,515/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.16,93,515-7,12,687=Rs.9,80,828/-**. On the enhanced amount of the compensation i.e. **Rs.9,80,828/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Out of the compensation, as now awarded, appellant-claimant No.1-Arjinder Kaur, is held entitled to Rs.6,80,828/-, whereas, appellant-claimant No.2, is held entitled to Rs.3,00,000/-.

So far as, the liability to pay the compensation is concerned, learned Tribunal had dismissed the claim petition, qua respondent No.2-insurance company, and had fastened the liability to pay the compensation,

FAO-5762-2010

only upon respondent No.1-Balbir Singh, in the capacity of being driver-cum-owner.

It is pertinent to the mention that in reply to the claim petition, the insurance company had raised a plea that respondent No.1-Balbir Singh, driver of the offending motorcycle, was not having valid driving licence, at the time of the accident. To so substantiate this plea, the insurance company had examined RW-1 Darbara Singh, who deposed about himself to be working with M/s Bhangu Secret and Detective Agency, which is on the panel of the National Insurance Company, for conducting the investigation, relating to the motor vehicular accident cases. He deposed about having conducted the investigation, relating to the present case and furthermore, has also deposed that he had gone to the house of respondent No.1, to know about his driving licence, but Balbir Singh refused to give his driving licence. This witness also deposed that Balbir Singh was not having driving licence and he also came to know that Balbir Singh to be employed as Peon in the Canal Department, at Talwara and was drawing salary to the extent of Rs.9000-10000/- per month. He also deposed that he came to know about Balbir Singh to have been convicted under Section 304-A and 279 IPC and he was released on probation.

Furthermore, the insurance company had examined RW-2 Pankaj Sharma, Clerk of the District Court, who had brought the record, relating to the criminal trial case faced by Balbir Singh and he has also deposed that Balbir Singh was convicted in the case under Section 304A and 279 IPC. This witness further deposed that in the file, there is no driving licence of Balbir Singh, nor any application has been filed, for seeking return of the

FAO-5762-2010

driving licence.

Considering the aforesaid evidence, the liability has been solely fastened upon respondent No.1-Balbir Singh and the claim petition, qua respondent No.2-insurance company has been dismissed. However, the aforesaid finding calls for intervention by this Court.

Firstly, it is pertinent to mention that even though, the plea was taken by the insurance company about respondent No.1, to be not having valid driving licence, at the time of accident, but however, no essential steps have been taken, to so substantiate this plea. Undisputedly, Balbir Singh had proceeded against ex-parte before learned Tribunal. However, RW-1 Darbara Singh has been examined by the insurance company. Though, said witness had stated about having visited the house of Balbir Singh, but however, it is in very vague manner, this witness had stated about his visit to the house of Balbir Singh, but no further particulars and date, as to when he had gone there and met Balbir Singh, has been stated by him. This witness has also not disclosed the name of any person, from the vicinity, with whom he had contacted to know about vocation followed by Balbir Singh. Even, if it be so, this witness had further stated that he came to know about Balbir Singh to be working as Peon in Canal Department at Talwara.

Even if the testimony of said witness is assumed to be correct, it is pertinent to mention that the insurance company was further required to have initiated the steps, to summon Balbir Singh as a witness, in the minimum and to seek the production of the driving licence from him, but no such steps have been taken by the insurance company, despite the fact, of having come to know about his residential address and further also, about his official

address, where he was allegedly working as Peon.

Though, during the course of arguments, it is submitted that RW-2 Pankaj Sharma has been examined and in the criminal case, the driving licence was not produced, but however, this alone is not sufficient. Further steps were required to call upon Balbir Singh as a witness and asking him to produce the driving licence. No such steps have been taken. Such being the fact situation, the insurance company, cannot be absolved from the liability, while concluding about Balbir Singh to be not having a valid driving licence, as proper steps, have never been taken by the insurance company.

Therefore, the finding, so recorded by learned Tribunal, vis-a-vis, dismissal of the claim petition, qua the insurance company, is hereby set aside. Thus, the liability is also fastened upon respondent No.2- National Insurance Company Limited, jointly and severally with respondent No.1- Balbir Singh alias Vicky, to pay the compensation, so worked upon.

In view of the aforesaid terms, the present appeal stands allowed.

April 16, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No