

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) FAO-7718-2015 (O&M)

Balwinder Singh and another
...Appellants

VERSUS

M/s Rohtak District Transport Coop. Society Ltd. and others
...Respondents

(ii) FAO-7719-2015 (O&M)

Balwinder Singh and another
...Appellants

VERSUS

M/s Rohtak District Transport Coop. Society Ltd. and others
...Respondents

Date of Decision: February 09, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

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

 Mr.Harinder Kumar, Advocate
 for respondent No.3.

ARCHANA PURI, J.

These two above captioned appeals have been filed by the appellants-claimants, thereby, seeking enhancement of the compensation, granted by learned Tribunal, on account of death of Kiranpreet Kaur @ Kiranbir Kaur and Khushpreet Kaur, in a motor vehicular accident, which took place on 26.03.2012.

The respective claim petitions, arising from the same accident,

though were filed separately, but the same were decided on the same date i.e. 22.07.2015.

FAO-7718-2015 relates to the Award passed qua death of Kiranpreet Kaur @ Kiranbir Kaur and **FAO-7719-2015** relates to the Award passed qua death of Khushpreet Kaur.

On appraisal of the evidence, brought on record, learned Tribunal, vide respective Awards, had granted compensation to the extent of Rs.7,88,000/-, on account of death of Kiranpreet Kaur @ Kiranbir Kaur and vide separate Award, also granted compensation to the extent of Rs.1,00,000/-, on account of death of Khushpreet Kaur.

So far as the fact of accident and manner of its taking place, as well as liability, so fastened upon the respondents is concerned, it is pertinent to mention that no appeal has been filed by the respondents, who were made so liable, to challenge the Award and thus, this issue does not warrant any further scrutiny.

So far as **FAO-7718-2015** relating to the death of Kiranpreet Kaur @ Kiranbir Kaur is concerned, it is submitted by learned counsel for the appellants-claimants that Kiranpreet Kaur @ Kiranbir Kaur was 25 years old, at the time of accident. She was engaged in stitching garments and earning Rs.6,000/- per month. Furthermore, it is submitted that deceased Kiranpreet Kaur @ Kiranbir Kaur was a talented person, who used to take care of the family, besides, following the vocation of stitching. Now, on account of her death, it is submitted that the appellant No.1-Balwinder Singh as well as minor child Amrit Pal Singh, who was 4 years, at the time of death of Kiranpreet Kaur @ Kiranbir Kaur, have been deprived of the

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gratuitous services rendered by deceased Kiranpreet Kaur @ Kiranbir Kaur. However, learned counsel for the appellants-claimants submits that keeping in view the loss caused to the appellants, learned Tribunal, has erroneously considered the earnings of the deceased as Rs.3000/- per month. In fact, it is too meagre an amount. Considering the same, it is submitted that consequential work on of the compensation, as such, is also inadequate. As such, a prayer has been made for acceptance of the appeal and re-computation of the compensation.

So far as, FAO-7719-2015 is concerned, relating to the death of Khushpreet Kaur, it is submitted by learned counsel for the appellants-claimants that deceased was 1½ year old, at the time of accident and she was daughter of appellant No.1 and sister of appellant No.2, who have been deprived of the company of the deceased child. Considering the same and also considering the prevalent law, it is submitted that the compensation of Rs.1 lakh granted by learned Tribunal is also inadequate. As such, qua the same, also, a prayer has been made for the acceptance of the appeal.

On the contrary, learned counsel for the Insurance Company has submitted that looking at the kind of evidence, coming on record, the compensation, so granted, is just and reasonable, which calls for no further enhancement. As such, he submits that both the appeals sans merit and the same deserve to be dismissed.

In view of the submissions so made, record has been perused by this Court.

Firstly, let us consider the compensation, vis-a-vis, death of Kiranpreet Kaur @ Kiranbir Kaur. In view of the prevalent settled law, the

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compensation, so worked upon, calls for re-computation.

Even, though, it is pleaded about indulgence of deceased Kiranpreet Kaur @ Kiranbir Kaur, in stitching work, but however, no substantial evidence has been led, on this aspect. In the given circumstances, the compensation, ought to be worked upon, while considering the deceased as homemaker.

It has to be kept in mind that learned Tribunal constituted under the Motor Vehicles Act, as provided in Section 168 is required to make an Award, determining the amount of compensation, which is to be in the real sense, ‘**damages**’, which in turn appears to be just and reasonable. Simultaneously, the statutory provisions clearly indicate that the compensation must be just and it cannot be bonanza, nor a source of profit, but the same should not be pittance. The Courts are expected to have realistic approach and also have the duty to weigh various factors, to quantify the amount of compensation, which should be ‘just’. Every method or mode adopted for assessing the compensation, has to be considered, in the background of ‘just’ compensation, which is pivotal consideration. Though, the expression ‘just’ provides a wide discretion to the Court, but however, determination has to be rational, to be done by the judicious approach. The expression ‘just’ denotes equitabilty, fairness and reasonableness and non-arbitrary. If it is not so, it cannot be concluded to be ‘just’.

There are two categories of situations, which the Court usually encounter to make assessment of compensation, to be granted to the victims of the motor vehicular accident cases. One such category is of the non-earning victims, that the Courts are called upon to calculate the

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compensation for the homemakers. The grant of compensation for homemakers, on pecuniary basis, has been considered by the Courts, time and again.

In *Lata Wadhwa vs. State of Bihar, 2001(8) SCC 197*, emphasis was laid by the Court to determine the compensation, on the basis of services rendered by the homemaker to the house and on the basis thereof, it was observed that though there is no date for determination of compensation, but however, taking into consideration, multifarious services rendered by the housewives for managing the entire family, the value of the services should be assessed and compensation be worked upon.

In *Arun Kumar Aggarwal vs. National Insurance Company Ltd., 2010(9) SCC 218*, while considering the case of grant of compensation, on account of death of a housewife, due to the motor vehicle accident, it was observed that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. Furthermore, it was observed that the gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs, cannot be equated with the services rendered by others. The Court also observed that though, it was impossible to quantify any amount, in lieu of the services rendered by the wife/mother, to the family, but however, for the purposes of award of compensation to the dependents, some pecuniary estimate has to be made of the services of the housewife/mother. In this context, it was held that the term “services” is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a

wife.

Beneficial reference is also made to *Kirti and another v/s Oriental Insurance Company Ltd., 2021(2) SCC 166*, wherein, the Hon'ble Supreme Court, while considering the case of death of a homemaker, has observed, as herein given:-

“32. Returning to the question of how such notional income of a homemaker is to be calculated, there can be no fixed approach. It is to be understood that in such cases the attempt by the Court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances.”

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“35. However, it must be remembered that all the above methods are merely suggestions. There can be no exact calculation or formula that can magically ascertain the true value provided by an individual gratuitously for those that they are near and dear to. The attempt of the Court in such matters should therefore be towards determining, in the best manner possible, the truest approximation of the value added by a homemaker for the purpose of granting monetary compensation.

36. Whichever method a Court ultimately chooses to value the activities of a homemaker, would ultimately depend on the facts and circumstances of the case. The Court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively, nor so liberally as to make it a bounty to claimants [National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680; Kajal v. Jagdish Chand, (2020) 4 SCC 413].”

Therein, it was also held that effects of inflation would equally be applied to the cases of assessment of notional income of the homemaker and on this account, it was further held that the future prospects, also are required to be taken into consideration.

Thus, summing up, general observations were made regarding

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the issue of calculation of notional income for homemakers and grant of future prospects, with respect to them, for the purposes of grant of compensation, which was summarized, as follows:-

“a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation’s international law obligations and our constitutional vision of social equality and ensuring dignity to all.

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.”

In this backdrop, advertent to the case in hand, it is pertinent to mention that deceased Kiranpreet Kaur @ Kiranbir Kaur, at the relevant time was 25 years old. She had two children, besides the husband. One of the child is appellant-claimant No.2-Amritpal Singh, who was 4 years old, at the time of filing of the claim petition and daughter Khushpreet Kaur, who unfortunately also died in the same accident, who was 1½ years old. It should be kept in mind that there is no substitute to mother’s love and affection, with which the appellant No.2, who was of tender age, was being looked after by his mother (since deceased) and the other child, who was daughter, who had died in the accident in question, must also be tendered

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with love and care by her mother. PW-1 Balwinder Singh also in the witness box has stated about indispensable role of Kiranpreet Kaur @ Kiranbir Kaur. Considering the same, the value of services rendered by deceased Kiranpreet Kaur @ Kiranbir Kaur in the present case, in modest estimate, can appropriately be taken to be Rs.5,000/- per month.

To the said amount, keeping in view the age of the deceased, as per *Pranay Sethi's case (supra)*, addition of 40%, on the count of 'future prospects' has to be made and total amount of earnings comes to be Rs.5000+2000(40%)=Rs.7,000/- per month. From the said amount, 1/3rd is to be deducted on account of 'personal expenses', which is to the extent of Rs.2333/- and the residue amount works out to be Rs.4667/- per month, annual whereof, comes to be **Rs.56,004/-**.

Considering the age of the deceased, as per *Sarla Verma's case (supra)*, the appropriate multiplier to be applied in the present case is '18' and after, so applying this multiplier, the loss of dependency comes to be Rs.56004x18=**Rs.10,08,072/-**.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in *Pranay Sethi's case (supra)*. The concept of consortium, has been dilated in detail in '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', and as per the same, the claimants are entitled to compensation, on the loss of consortium, be it 'parental', 'spousal' or 'filial'.

In consonance with the observations made in *Pranay Sethi's case (supra)*, while making addition of 10% under the heads of 'loss of

consortium’, ‘loss of estate’ and ‘funeral expenses’, after every three years, at present, the amount payable, on all the three aforesaid heads, is to the extent of **Rs.48,400/-**, **Rs.18,150/-** and **Rs.18,150/-**, respectively.

Considering the same, the compensation payable to dependents, on account of death of Kiranpreet Kaur @ Kiranbir Kaur, is re-computed, as herein given:-

Loss of dependency	:	Rs.10,08,072/-
Loss of consortium	:	Rs.96,800/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.11,41,172/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.11,41,172-7,88,000=Rs.3,53,172/-**. On the enhanced amount of the compensation i.e. **Rs.3,53,172/-**, 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 enhanced compensation, appellant-claimant No.1 is held entitled to **Rs.1,53,172/-** and, whereas, appellant-claimant No.2 is held entitled to **Rs.2,00,000/-**. The residue terms of the Award, shall remain the same.

Now, reverting to FAO-7719-2015, which relates to the death of Khushpreet kaur, who was daughter of appellant No.1 and sister of appellant No.2.

Suffice to consider, for the disposal of the present appeal, that deceased Khushpreet Kaur was asserted to be 1½ years old, at the time of accident. Considering the deceased child to be less than 5 years, a lumpsum

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amount of Rs.1 lakh was granted, which was to be equally shared by the appellants.

As per settled prevalent law, the compensation, so granted by learned Tribunal calls for enhancement.

In this regard, at the very outset, it is pertinent to mention that Hon'ble Supreme Court in case titled as '*Kishan Gopal and another v/s Lala and others, 2013(4) RCR (Civil) 276*', while considering the death of a child, aged 10 years, took the notional income of the deceased as Rs.30,000/- and applied multiplier of '15' and compensation came to be Rs.4.5 lakh. Another Rs.50,000/- was given towards love, affection, funeral expenses and last rites. The accident in that case, related to the year 1992.

Even, the Hon'ble Supreme Court in case titled as "*Kurvan Ansari alias Kurvan Ali and another v/s Shyam Kishore Murmu and another, Civil Appeal No.6902 of 2021 decided on 16.11.2021*", while making reference to *Krishan Gopal's case (supra)* as well as *R.K. Malik and another vs. Kiran Pal and others (2009)14 SCC 1*, observed that in spite of repeated directions, the Schedule-II is yet not amended and the fixing of notional income @ Rs.15,000/- per annum, for non-earning member, is not just and reasonable. Considering the same, in the case under consideration, the Court took the notional income of the deceased child @ Rs.25,000/- per annum and applied the multiplier of '15', as prescribed in Schedule-II for the claim under Section 163-A of the Motor Vehicles Act and worked upon the compensation as Rs.3.75 lakh, towards the loss of dependency. Another amount Rs.40,000/- each was given to the claimants, who were two in number, towards filial consortium and Rs.15,000/- was given towards

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funeral expenses. The total compensation was worked upon as Rs.4,70,000/-.

Useful reference is also made to decision rendered by the Hon'ble Supreme Court '*Meena Devi v/s Nunu Chand Mahto @ Nemchand Mahto and others, 2022(4) RCR (Civil) 553*', wherein, the Hon'ble Supreme Court was considering the case of death of 12 years old child, in a motor vehicular accident and while granting compensation, had observed that the principle laid down in case of *Kishan Gopal's case (supra)*, are aptly applicable to the facts of the case (in hand), and thus, took the notional earnings as Rs.30,000/- including future prospects and applying the multiplier of '15', the loss of dependency was worked upon to be Rs.4,50,000/- and addition of Rs.50,000/- was made under conventional heads and thus, the total compensation was worked upon as Rs.5,00,000/-

Now reverting to the case in hand. The accident, in the present case, had taken place on 26.03.2012 and also considering the date of death in *Kishan Gopal's case (supra)*, the value of rupee has come down drastically.

Taking into consideration, all the aforesaid factors and the case law, in modest estimate, the notional earnings of the deceased Khushpreet Kaur, can safely be taken to be Rs.30,000/- per annum. Thus, considering the age of the deceased, the multiplier to be applied in the case, in hand, is '15' and so calculating, the loss of dependency comes to be Rs.4,50,000/-.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium and funeral expenses as held in *Pranay Sethi's case (supra)*. The concept of consortium, has been dilated in detail in '*Magma General Insurance Company Limited vs. Nanu*

Ram @ Chuhru Ram and others, 2018 (18) SCC 130', and as per the same, the claimants are entitled to compensation, on the loss of consortium, be it 'parental', 'spousal' or 'filial'.

In consonance with the observations made in *Pranay Sethi's case (supra)*, while making addition of 10% under the heads of 'loss of consortium' and 'funeral expenses', after every three years, at present, the amount payable, on both the aforesaid heads, is to the extent of **Rs.48,400/-** and **Rs.18,150/-**, respectively.

Considering the same, the compensation payable to appellant-claimant, on account of death of Khushpreet Kaur, is re-appraised, as herein given:-

Loss of dependency	:	Rs.4,50,000/-
Loss of consortium	:	Rs.96,800/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.5,64,950/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.5,64,950-1,00,000=Rs.4,64,950/-**. On the enhanced amount of the compensation i.e. **Rs.4,64,950/-**, the appellant-claimant 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. The apportionment of the compensation and remaining terms of the Award, shall remain the same.

With the above observations, both the appeals stand allowed.

February 09, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No