

(2016) 04 P&H CK 0246
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 4596 of 2012

Bharti Axa General Insurance Company Ltd.	APPELLANT
Vs	
Baljeet Kaur and others	RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2016) 3 LawHerald 2234

Hon'ble Judges : Mr. Amol Rattan Singh, J.

Bench : Single Bench

Advocate : Mr. Subhash Goyal, Advocate. in FAO No. 4596 of 2012, Mr. R.S. Modi, Advocate. in FAO No.4087 of 2013, for the Appellant; Mr. Subhash Goyal, Advocate. in FAO No. 4087 of 2013, Mr. R.S. Modi, Advocate. in FAO No.4596 of 2012, for the Respondent

Final Decision : Partly Allowed

Judgement

Amol Rattan Singh, J.—These are two cross appeals, one filed by the claimants before the learned Motor Accident Claims Tribunal, Sangrur, and the other by the insurance company that had insured the vehicle, the driver of which was held responsible for negligence, that led to the accident in which Gurdas Singh, husband of claimant Baljit Kaur and father of claimants Lovepreet Singh and Amandeep Singh, lost his life. The 4th claimant was his mother, Gurdev Kaur.

1. By the impugned Award dated 27.09.2011, the learned Motor Accident Claims Tribunal, Sangrur, awarded the appellants a total compensation of Rs.13,65,000/- along with interest thereupon, @ 7.5% per annum, running from the date of the filing of the claim petition, till the date of its actual realization.

2. The insurance company has not challenged the finding on the negligence of respondent No.1, i.e. the driver of the "offending vehicle" (respondent No.5 in the appeal filed by the claimants, i.e. FAO No.4596 of 2012). It is only in appeal against the quantum of compensation awarded by the Tribunal. Consequently, since the finding on the accident having taken place due to the negligence of

respondent No.1, is not under challenge, the issue of the adequacy/inadequacy of the compensation awarded, is being taken up being obviously common to both the appeals, before which a brief background is necessary.

3. As per the facts taken from the impugned Award, deceased Gurdas Singh was going to Sangrur on 23.07.2011, on his motorcycle bearing registration No. PB-10-CX-(T)-8477, stated to be followed on another motorcycle by Teja Singh and Mukhtiar Singh. When the motorcycle of Gurdas Singh reached the T-point of village Dhandoli Khurd at about 3:45 a.m., a truck bearing registration No. HR-63-9875 is stated to have come from the opposite side, allegedly driven in a rash and negligent manner by respondent Sham Lal, which struck against the motorcycle of Gurdas Singh and dragged him and the motorcycle for about 10 karams (about 55 ft.), after which the motorcycle of Gurdas Singh is stated to have caught fire.

Gurdas Singh suffered multiple injuries, with the motorcycle also being damaged. He was initially taken to the Civil Hospital at Sangrur but was referred from there to Dayanand Medical College and Hospital, Ludhiana, where he unfortunately succumbed to his injuries.

At the time of his death, Gurdas Singh is stated to have been 35 years of age, owner of two trucks/"trallas" (colloquial term for a large truck), earning Rs.25,000/- per month, also being a "competent driver" himself.

The claimants raised a claim of Rs.35,00,000/- against the respondents, for the death of Gurdas Singh in the accident.

4. Upon notice, the driver and the owner of the truck in question filed a joint written statement and the insurance company with which the said truck was insured (presently appellant in FAO No.4596 of 2012), filed a separate written statement.

Respondents No.1 and 2 wholly denied the accident and claimed that a false FIR had been registered against respondent No.1. The insurance company, other than the usual preliminary objections of non-joinder, the vehicle not carrying a valid fitness certificate and permit, etc., contended that the claim was excessive.

5. The issues having been framed with regard to negligence, amount of compensation payable and liability to pay it, the respective sides led their evidence.

Baljit Kaur, appellant No.1 in FAO No.4087 of 2013 and respondent No.1 in FAO No.4596 of 2012 (hereinafter to be referred to as the claimant No.1 for convenience) deposed before the Tribunal as CW1, in terms of the claim petition. She also examined Teja Singh as CW2 and Mukhtiar Singh as CW3. All three of them tendered their affidavits in support of which they stood testimony.

The respondents before the Tribunal examined the driver of the truck bearing registration No. HR-63-9875, i.e. Sham Lal (respondent No.5 in FAO No.4596 of

2012 and respondent No.1 in FAO No.4087 of 2013), (hereinafter to be referred to as the driver for convenience). He too tendered his affidavit, in evidence.

6. As already stated in the beginning of the judgment, with the finding of negligence of respondent Sham Lal not being in issue even in the appeal of the insurance company, only the evidence on the compensation to be paid, as appraised by the Tribunal, is to be considered by this Court.

The claimants proved the ownership of one truck bearing registration No. MP-GH-2936 to be that of deceased Gurdas Singh, further placing on record an affidavit of one Hardeep Sharma, resident of Dirba Mandi (the place of residence of the claimants), to the effect that he was the owner of "vehicle" bearing registration No. PB-13S-9851 which he had sold to Gurdas Singh.

Claimant Baljit Kaur reiterated her contention that her husband was earning Rs. 25,000/- per month from the ownership of the aforesaid trucks, which now she and her family would lose.

7. On consideration of the aforesaid evidence, the learned Tribunal held that only the ownership, by Gurdas Singh, of truck bearing registration No. MP-GH-2936, stood proved, as the affidavit of Hardeep Sharma, was not proved because neither did he step into the witness box, nor was any other document produced to show that he had actually sold his commercial vehicle to Gurdas Singh.

Further, in the absence of any substantive proof of actual income derived from the truck owned by Gurdas Singh, his income was taken to be Rs.10,000/-per month from the said truck.

Still further, the age of the deceased was taken to be 42 years at the time of his death, on the basis of the date of birth given on his driving licence, which was 14.08.1969.

With the claimants being four in number, i.e. the widow, two children and mother of Gurdas Singh, a 7th deduction was made by the Tribunal towards the personal living expenses of the deceased and consequently, the loss of income was held to be Rs.7500/- per month.

To the aforesaid income, a multiplier of 15 was applied by citing the judgment in Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121, thereby arriving at the amount of Rs.13,50,000/-, as the total loss of income to the claimants.

8. Rs.5000/- was awarded towards funeral expenses and Rs.10,000/- by way of loss of consortium to claimant Baljit Kaur.

Hence, the total compensation awarded, as already noticed, was Rs.13,65,000/- plus interest @ 7.5% per annum.

Of the aforesaid principal sum, claimant Baljit Kaur was held entitled to Rs.8,00,000/-, claimants No.2 and 3, i.e. the minor sons of the deceased were

held entitled to Rs.2,00,000/- each and claimant No.4, i.e. the mother of the deceased, was held entitled to the remaining amount of Rs.1,65,000/-.

9. Before this Court, Mr. Subhash Goyal, learned counsel for the appellant insurance company, submitted that the Tribunal erred in assessing even Rs.10,000/- as the income of the deceased, in view of the fact that the truck which was stated to be the source of income of Gurdas Singh, would continue to remain with the family. Hence, even if they were to employ a driver on the said truck, the only depletion from that income, would be in respect of the drivers' salary.

In this regard, learned counsel referred to the judgment of Supreme Court in Rani Gupta and others v. M/s United India Insurance Co.Ltd. & Ors., 2009 (2) RCR (Civil) 900.

Mr. Goyal further submitted that the multiplier applied by the Tribunal is also incorrect in terms of the ratio of the judgment of Sarla Verma's case (supra), because when the deceased was in the age group of 41 to 45 years, the multiplier applied should be 14 and not 15.

Hence, learned counsel submitted that the compensation of Rs.13,65,000/- should, as a matter of fact, be reduced.

None appeared for the claimants (appellants in FAO No.4087 of 2013), though as per the order sheet of this case, Mr. R.S. Modi, Advocate, had appeared on the last date, when the matter came up for arguments (on 18.05.2015).

10. Having considered the arguments of Mr. Goyal, learned counsel for the insurance company, and having perused the impugned Award as also the grounds of appeal filed in FAO No.4087 of 2013, (by the claimants), this Court is of the opinion that the appeal of the claimants deserves to be partly allowed.

Though I am in agreement with Mr. Goyal that the multiplier applied by the Tribunal was erroneous, inasmuch as a multiplier of 14 instead of 15 should have been applied in terms of Sarla Verma's case, the other contention of Mr. Goyal, with regard to excessive income of the deceased assessed, is not acceptable. This is for the reason that though, undoubtedly, the truck owned by the deceased Gurdas Singh would still be available to the claimants, however, with his sons both being minors at the time of his death, obviously neither of them, nor his widow, could be expected to actually operate the truck.

As regards the judgment in Rani Gupta's case (supra), cited by Mr. Subhash Goyal, learned counsel for the insurance company, it was held in para 24 thereof, that the actual loss of dependency of a deceased businessman, is his contribution to run the business. The assets of the business remain with the family, i.e. the claimants.

Undoubtedly, the ratio of that judgment would hold in the present case.

However, even if the fact that the claimants could not operate the trucks

themselves is to be ignored (which it cannot be), the fact remains that even if the claimants were to retain the truck, obviously they would need to employ a driver for the same, as also admitted by Mr. Goyal, upon query by the Court. Even taking such drivers' monthly salary to be Rs.7000/- to Rs.8000/-, the contribution of the deceased towards obtaining business, coupled with the fact that he was himself a competent driver, with his driving licence duly produced before the Tribunal, I find no error in the assessment made by the Tribunal, that a minimum of Rs.10,000/- was what the deceased would have earned.

Yet, in the absence of any proof that the deceased was earning a higher income than Rs.10,000/-, I am not inclined to assess any higher amount of income even though that is one of the grounds pleaded in the grounds of appeal, in FAO No.4087 of 2013, filed by the claimants. There too, again no reason is disclosed for assessing a higher amount of monthly income, other than the fact that the oral testimonies of the witnesses were to the effect that the deceased was earning Rs.25,000/-.

Consequently, the income of the deceased, as assessed by the Tribunal, i.e. Rs.10,000/- is maintained. The annual income would therefore, be Rs.1,20,000/-.

The deduction towards the personal living expenses of the deceased, has been correctly made by the Tribunal in terms of the judgment in Sarla Verma's case, wherein it was held that if the number of dependents is 4 to 6, a 25% deduction towards the personal living expenses of the deceased is to be made. Though subsequent judgments have held that in cases of extreme hardship the deduction should be suitably reduced, if the number of dependents are too many or/and the income of the deceased was too low, I do not see such a situation in the present case.

Consequently, applying a deduction of 25% to the annual income of the deceased, the loss of annual dependent income to the claimants comes to Rs.90,000/-.

To that sum, a multiplier of 14 is to be applied, thereby bringing the total loss of dependent income of the claimants to be Rs.12,60,000/-.

11. However, it is seen that the Tribunal wholly erred in firstly awarding only Rs.5000/- towards funeral expenses and last rites of the deceased, and only Rs.10,000/- towards loss of consortium to the widow of the deceased.

It has further erred, as per settled law, in awarding no amount at all to the minor children of the deceased, by way of loss of love and affection and care and guidance of their father. Further, in the opinion of this Court, the Tribunal further erred in not awarding any amount for loss of love and affection, to the mother of the deceased.

In *Rajesh and others v. Rajbir Singh and others* (2013)(9) SCC 54 and *Vimal Kanwar and others v. Kishore Dan and others* (2013)(7) SCC 476, for the loss of consortium Rs.1,00,000/- was awarded to the widow of the deceased and in *Sanobanu Nazirbhai Mirza and others v. Ahmadabad Municipal Transport Service*,

2013 (4) RCR (Civil) 732 and Rajesh and others v. Rajbir Singhs" case (supra), Rs.1,00,000/- was awarded for the loss of love and affection, care and guidance of their father, to minor children. In Vimal Kanwars" case (supra), Rs.2,00,000/- was awarded to the daughter of the deceased and Rs.1,00,000/- was also awarded to the mother of the deceased.

12. Applying the ratio of the aforesaid judgments, Rs.1,00,000/- is therefore awarded to the widow of the deceased, i.e. appellant No.1 in FAO No.4087 of 2013, Rs.1,00,000/- each is also awarded to the minor sons of the deceased, appellants No.2 and 3 in that appeal.

Since the deceased was about 42 years of age, it can be presumed that his mother was not too young at the time of her sons" death and consequently, Rs.50,000/- is awarded to her for loss of love and affection of her son, as has been done in other cases by this Court.

In terms of the judgments of the aforesaid cases, i.e. Rajesh v. Rajbir and Vimal Kanwar, constantly followed subsequently also, Rs.25,000/- is awarded by way of funeral expenses and last rites of the deceased.

13. Coming then to the issue of loss of future prospects of income, which though not specifically referred to in that phraseology by the appellants, in the grounds of appeal in FAO No.4087 of 2013, but has still been raised by averring that the Tribunal has completely overlooked the future complications that would arise to the claimants, by way of loss of income.

In this regard, it is to be noticed that the issue of whether loss of future prospects of income are to be awarded or not, where the deceased was not on a fixed salaried income in a permanent job, has been referred by the hon"ble Supreme Court to a larger Bench, in National Insurance Co. Ltd. v. Pushpa, (2015) 9 SCC 166. Hence, though in Rajesh v. Rajbir and Vimal Kanwars" cases, it was held that said future prospects of income would also be payable to those claimants, even where the deceased was not in salaried employment, the proper course now would be (as has also been adopted in other cases by this Court), to calculate the loss of future prospects of income as per the methodology laid down in Sarla Verma's" case and in the aforesaid two cases, but to order disbursement of the said calculated amount only upon the decision of the Supreme Court (larger Bench) on the issue.

14. Consequently, the loss of future prospects of income are calculated, in terms of the aforesaid judgments, as under:-

i)

Assessed income of the deceased :

Rs.10,000/-

(addition @ 15% of that income, the deceased being between 40 to 50 years of age) :

Rs.1500/- per month

ii)

Loss of dependent future income, after 7th deduction towards personal expenses of the deceased :

Rs.1125/- per month

iii)

Loss of annual future prospects of income :

Rs.13,500/-

iv)

Loss of total future prospects of income :

$(Rs.13,500 \times 14) = Rs.1,89,000/-$

The aforesaid amount of Rs.1,89,000/- would immediately be deposited by the insurance company with the Tribunal, along with interest accruing thereupon @ 7.5% per annum, from the date of the filing of the claim petition, till the date of such deposit.

The learned Tribunal would then order the aforesaid amount to be deposited in a fixed deposit in a nationalised bank, carrying maximum interest.

If the judgment of the Supreme Court (larger Bench) holds that claimants in such like cases are entitled to loss of future prospects of income, then the appellants in FAO No.4087 of 2013 would be entitled to seek disbursement of the amount lying with the bank, inclusive of the interest that would have accrued in the fixed deposit, in the same manner as an Award of the Tribunal is executable, without any further reference to this Court.

If, on the other hand, the Supreme Court holds that claimants in such like cases, where the deceased was not in a permanent salaried employment, are not entitled to compensation for loss of future prospects of income, the insurance company, i.e. the appellant in FAO No.4596 of 2012, would be entitled to get the entire amount refunded to itself on applying to the Tribunal for the same, in like manner, with no further reference to this Court.

15. Thus, other than what is to be deposited by the insurance company with the Tribunal for further deposit in a fixed deposit (by way of loss of future prospects of income), the compensation now awarded by this Court to the appellants in FAO No.4087 of 2013, under all other heads is as follows:-

i)

Loss of income :

Rs. 12,60,000/-

ii)

Loss of consortium to appellant No.1 :

Rs.1,00,000/-

iii)

For loss of love & affection, care and guidance to appellants No. 2 & 3 :

Rs. 1,00,000/- each = Rs. 2,00,000/-

vi)

For loss of love and affection to respondent No.4 :

Rs. 50,000/-

v)

For funeral and last rites (to appellant No.1) :

Rs. 25,000/-

Total :

Rs. 16,35,000/-

Thus, the enhanced amount of compensation over and above what was awarded by the Tribunal (Rs. 13,65,000/-), is Rs. 2,70,000/-.

Though this Court has awarded an additional amount of Rs. 90,000/- by way of loss of consortium to appellant No.1, over and above Rs. 10,000/- awarded to her by the Tribunal under that head, factually the total compensation under the head of loss of income has been reduced by this Court from Rs.13,50,000/- awarded by the Tribunal, to Rs. 12,65,000/-, which is a reduction of Rs. 85,000/- under that head.

Hence, of the enhanced amount of Rs. 2,70,000/-, Rs.1,00,000/- each shall be disbursed to appellants No.2 and 3. If they are still minors, the said sums would be got deposited by the Tribunal in fixed deposits in each of their names in a nationalised bank carrying maximum interest, to be disbursed to them upon their attaining the age of majority; and if they are already of such age, then to be disbursed to them immediately.

Rs. 50,000/- would now be disbursed to respondent No.4, i.e. Gurdev Kaur, mother of the deceased. The remaining amount of Rs. 20,000/- only, would be disbursed to appellant No.1. This is considered appropriate as she has already been apportioned an amount of Rs. 8,00,000/- by the Tribunal.

The aforesaid sums would be disbursed to the respective claimants as held above, along with interest @ 7.5% per annum, running from the date of filing of the claim petition, till the date of actual realisation thereof.

16. To conclude, though to an extent the appeal of the insurance company has been partly allowed, to the extent that the multiplier applied by the Tribunal has been reduced from 15 to 14 by this Court, in terms of the ratio of Sarla Verma's judgment, effectively however, the total compensation awarded by the Tribunal has been enhanced by this Court from Rs. 13,65,000/- to Rs. 16,35,000/-.

17. Consequently, FAO No. 4596 of 2012 filed by the insurance company is dismissed and FAO No.4087 of 2013, filed by the claimants, is partly allowed, as above.

18. No order as to costs, in either case.