

(2011) 01 P&H CK 0219
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 3455 of 2005

Smt. Raka Ghirra and Others

APPELLANT

Vs

Kaka Singh Kamboj and Others

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Citation : (2011) 01 P&H CK 0219

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—All the above cases arise out of the same accident involving a passenger car and a truck in which three persons had died and one was injured. All the cases address the issue of adequacy of compensation assessed by the Motor Accident Claims Tribunal. At the trial, there was also an attempt by the insurance company to contend that the insured's vehicle had not been involved at all in the accident. There were perhaps several instances to excite suspicion of Court but it found that the insured's vehicle had been involved by the only fact that the driver himself had admitted to the involvement but he was contending that there had been no negligence on his part. Before the Tribunal, again, it was not possible to make an inference of any form of collusion between the owner and the claimants. I will let the issue of the involvement of the vehicle as fully concluded by the judgment and I will proceed to examine this batch of cases only as regards the adequacy of compensation.

2. In FAO No. 3455 of 2005 the claim arises at the instance of the widow and two minor children. The deceased was a Deputy Superintendent of Police and the income certificate had been produced before the Court through PW2. His monthly income had been shown at Rs. 14,644/-. It was in evidence that his wife had been given employment on compassionate ground on 19.10.2001 and she was getting salary of Rs. 10,000/-per month. The Tribunal, therefore, took the income of the wife as going in deduction and took the remaining amount, which

would have come to the family as going to the contribution to the family, adopted a suitable multiplier relating to the age and determined a compensation of Rs. 4,32,000/-.

3. Learned senior counsel appearing for the claimants contends that this is wholly erroneous and the income earned by the wife was for services rendered and not paid gratuitously. A compassionate appointment, whether it could have any bearing to the compensation, has gone through a slight change from the way it was at all times understood and applied with the pronouncement of the Hon"ble Supreme Court in Bhakra Beas Management Board Vs. Smt. Kanta Aggarwal and Others, . In that case the wife had been given compassionate appointment and also provided with free accommodation. Against the compensation of Rs. 8 lacs which had been assessed by the Tribunal without reference to the compassionate appointment and benefits that had been extended, the Hon"ble Supreme Court reduced the compensation at Rs. 5 lacs. This Court itself had an occasion to deal with a scheme of compassionate assistance given by the Haryana State Government in a decision in New India Assurance Company Limited through its Deputy Manager v. Santosh and others in FAO No. 2246 and 3432 of 2009 decided on 29.09.2010. The details of the compassionate assistance scheme was slightly different in that it provided for the salary that was being earned by the husband on the date of his death to be given to the representatives of the family for a certain number of years. As per the terms of the scheme, it was not necessary that any of the members of the family had to render any services but all the payments were gratuitous in one sense and the only element of quid pro quo that could be attributed was that the payment was being made for the services rendered by the husband as a measure of compassionate assistance. While deciding the cases in paragraph 12, I had observed as follows:

12. When we consider whether there could be any deduction made for benefits received by the legal representatives of the deceased, the following questions must be asked: Is the benefit the direct result of death? If yes, is the benefit a mode of deferred wage or a return for present services rendered? If yes again, there shall be no deduction. On the contrary, is it a legally enforceable right of monetary benefit that requires no compulsory service to be rendered by the representative to claim the benefit? If the answer yes, appropriate deduction shall have to be made, though it may not result in total effacement of the claim.

4. The difference, in my view, is if the benefit which accrues to a person is not purely gratuitous then there will be no deduction. If, on the other hand, a benefit comes wholly gratuitously and it is based on an enforceable right then a monetary benefit that accrues can be deducted. There have been several decisions that have always held a compassionate appointment given to a person shall not be factored while determining compensation. It is not without a legal reason. The reason is that the salary that a person gets is for the services rendered and not directly on account of death of a person. In this case, the

salary which a wife gets @Rs.10,000/-is not given to her gratuitously to apply a straight deduction. On the other hand, she was receiving the salary for the services which she was rendering. It must be again noticed that if her husband had been alive, she could have still secured a job through open market competition or she may not have, at all. Now she has to work in order to earn what her husband would have earned if he had been alive. The deduction of the entire amount which she was earning, was, therefore, not definitely appropriate at all. Again, it is not possible to make a very clear deduction from the judgment of the Hon"ble Supreme Court in Bhakra Beas Management"s case the extent of deduction that could be possible. In that case, the Hon"ble Supreme Court did not make any calculation but had scaled down the determination from Rs. 8 lacs to Rs. 5 lacs. The definite benefit that was noted was that she had been given a rent free accommodation and she was allowed to continue in the same house in which they were living, when her husband was alive and offered as official accommodation. The family also had some free medical services. Beyond that, there is nothing in the judgment for an inference that a person who had secured compassionate employment and drawing salary could go in total deduction. There is, therefore, no justification at all for a person to be denied the benefit of compensation which is to be ascertained in the normal fashion. The only modification which I will, however, make is that in terms of the decision of the Hon"ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , for a person who is aged less than 40 years and who has a definite prospect of increase in salary, the judgment advocates for applying a 50% increase. I will not make any such increase, having regard to the special circumstances ingested in this case that the wife had stood by an employment and she was also receiving a salary. The same employment would not have been granted to her on compassionate grounds if he had been alive. It is not as if she could have demanded an employment in a compassionate appointment scheme. I would, therefore, take the monthly income of the husband to be Rs. 15,000/- and would make a deduction of 10% as going towards tax. I would, therefore, take the income to be Rs. 13,500/-, make a deduction of 1/3rd and take 2/3rd as going towards contribution to the family. This will mean the contribution would be Rs. 9,000/-per month and per year it will be Rs. 1,08,000/-. I would apply a multiplier of 17 for a person who was aged 32 years and take the loss of dependence at Rs. 18,36,000/-. I will add a further sum of Rs. 14,000/-towards loss of love and affection and loss of consortium to the wife and provide for a further sum of Rs. 5,000/-towards funeral expenses. I will not make any addition again to the loss of estate since the wife has come by benefit by virtue of employment and what accumulation could have gone to the estate would now come to the estate of the wife by her own employment. The total amount of compensation that will become payable would be Rs. 18,55,000/-and the amount in excess over what has been awarded by the Tribunal shall bear interest @6% from the date of the petition till the date of payment. The distribution of the amount shall be amongst all the claimants equally.

5. Since the accident in this case has taken place in 2000 and I am adopting a multiplier of 17, I would direct that 60% of the amount shall be permitted to be withdrawn by major claimants and remaining 40% will stay in deposit in a nationalized bank. The amount will be split into seven equal shares and the first share will be held for one year, the second share will be for a period of two years and so on upto seven years. On maturity of the respective deposits, it will be paid to the claimants, which will be subject to the further condition that no payment shall be made during the minority of any of the claimants.

6. The appeal is allowed to the above extent.

7. FAO No. 2736 of 2005 relates to death of Arvind Jindal, who was aged about 28 years and the claimants were the widow, two minor daughters aged 9 and 6 years and mother. He was said to be an employee earning Rs. 1,44,000/-and he was an income tax Assessee. The evidence was tendered through Sanjiv Thakur, Tax Assistant as PW2 and it showed a tax of Rs. 21,500/-was paid as advance tax. The tax returns also revealed that he had other sources of income which was stated at Rs. 46,038/-and Rs. 1958/-from Sangrur Rice Mill. He had also returns of bank interest and commission. In the oral evidence, it was stated that the deceased was managing 6-7 acres of land which he was owning. The whole of agricultural income would not be liable for tax and I would take that his own managerial skills for his land would require to be accounted at least Rs. 3,000/-per month. Taking an overall consideration of the income, I would assume that he was earning at least Rs. 1,75,000/-per year and if an amount of Rs. 21,500/-was to be deducted as tax, the annual income would be Rs. 1,53,500/-. When there was certain documentary evidence regarding his income, the Tribunal, however, had taken the income at Rs. 9,000/- per month and made a deduction of 1/3rd and applied a multiplier of 11. There was adequate evidence with reference to his age and for a young person of age less than 30 years and who had four dependents, I would, therefore, take the income to be Rs. 1,53,500/-, make a deduction of 1/4th and take the extent of contribution to the family at Rs. 1,15,125/-. I will adopt a multiplier of 17 and determine the loss of dependence at Rs. 19,57,125/-. There was also evidence that she had incurred on funeral expenses to the tune of Rs. 30,000/-. I would provide for Rs. 5,000/-for loss of consortium to the wife and at the same rate of Rs. 5,000/-for loss of love and affection for each one of the minor children and take Rs. 10,000/-for loss to estate and another Rs. 10,000/-for funeral expenses. The total amount that would become payable will be Rs. 19,92,125/-The Tribunal had assessed a compensation of Rs. 7,92,000/-. The amount in excess of what was already determined by the Tribunal shall bear interest @6% from the date of the petition till the date of payment and shall be divided equally amongst all the claimants. The liability shall be in the manner determined by the Tribunal. Since the accident in this case has taken place in 2000 and I am adopting a multiplier of 17, I would direct that 60% of the amount shall be permitted to be withdrawn by major claimants and remaining 40% will stay in deposit in a nationalized bank. The amount will be split into seven equal shares and the first share will be held

for one year, the second share will be for a period of two years and so on upto seven years. On maturity of the respective deposits, it will be paid to the claimants, which will be subject to the further condition that no payment shall be made during the minority of any of the claimants. The appeal in FAO No. 2736 of 2005 is allowed to the above extent.

8. The appeal in FAO No. 2735 of 2005 relates to death of one Charanjit Singh and the claimants were widow, minor son, daughter and old mother. The deceased was said to be 30 years of age and he was employed as an Assistant Technical Engineer in a private company, Deepak Wire Industries, Sunam. The salary certificate had been filed as PW2/C and it revealed that he was earning Rs. 7,000/-. There was also evidence that the family owned some agricultural land through their father and mother and they were getting an income of Rs. 20,000/-. I will not think that there is any need for providing for any loss of income towards agricultural operations, since there was evidence that the income was accruing to the family by contribution from other members of the family. I would take the income at Rs. 7,000/- as found in the certificate and provide for a 1/4th deduction and take Rs. 5250/- as contribution to the family. I will adopt a multiplier of 17 and find the total loss of dependence at Rs. 10,71,000/-. I would also add Rs. 5,000/- for loss of consortium to the wife and Rs. 5,000/- each for the minor children. I will take Rs. 5,000/- towards loss to estate and another Rs. 5,000/- towards funeral expenses. The total amount of compensation will be Rs. 10,96,000/-. The Tribunal had already determined Rs. 4,80,000/- and the amount in excess over what has been determined already shall attract interest @6% from the date of the petition till the date of payment.

9. The distribution of the amount found in excess shall be in the ratio of 2:2:2:1 between the widow, minor children and the mother.

10. As regards the share of the mother, the whole of amount shall be paid to her immediately and as regards the share of the widow and the children, since I have provided for a multiplier of 17 and the accident had taken place in the year 2000, I will accord the permission for widow to withdraw upto 60% and the remaining 40% shall stay in deposit and will be split into 7 shares and first share will be for a period of one year, the second share for a period two years and so on till the period of 7 years and they will be paid to the widow periodically on maturity of the respective deposits. As regards the shares of the children, they shall remain in deposit during the period of respective minority and on attaining majority 60% of the amount will be permitted to be withdrawn and the remaining 40;

11. will again be invested and allowed to be withdrawn in the manner indicated above.

12. The appeal in FAO No. 2735 of 2005 is allowed to the above extent.

13. The appeal in FAO No. 2855 of 2005 relates to a claim for compensation for a person, who was injured in the accident. The appeal is for enhancement of compensation, which is assessed at Rs. 70,000/-. The injury suffered by the

claimant Sandeep Kumar was supported by the evidence of Dr. Ravi Shankar as PW3, who had stated that the injured was operated upon on 10.07.2000 and he took treatment in the hospital at PGI for 12 days. The medical record was exhibited as P2. Dr. S.P. Singh as PW4 had testified that the injured was undergoing orthopaedic treatment under him. This was also further corroborated by Dr. J.P. Goel as PW5, who had issued a disability certificate assessing his disability at 25%. A disability certificate makes reference to the fact that it was a case of mal-united fracture of both bones of left fore-arm with limitation and supination of the left fore-arm with disfigurement of the face. The disability was found to be permanent and assessed at 25%. In the manner of determination of compensation, the Tribunal had provided for pain and suffering at Rs. 25,000/-, medical expenses at Rs. 10,000/-and for permanent disability at Rs. 50,000/-. To assess the compensation on some established parameters, I would take for the fracture of the fore-arm and for fracture of the nose and disfigurement suffered at Rs. 15,000/-and for surgical intervention another Rs. 5,000/-and provide for Rs. 20,000/-towards pain and suffering. I will retain the compensation for medical expenses at Rs. 10,000/- and for disability of 25%, I will understand that this would have meant with an inconvenience of having to put it with a situation of restriction of movement of fore-arm and for the disfigurement that he had suffered as constituting of loss of amenities of life and take the same amount as determined by the Tribunal at Rs. 50,000/-. Wherever, there is disability and it would have impacted the earning capacity in any way, it will become possible for a Court to assess the loss of earning capacity and determining the actual loss by adopting a suitable multiplier. In this case, it was not too clear from evidence as to what he was doing and how the earning capacity was in any way reduced by the injury suffered by him. With no evidence available and no evidence elicited from the doctor as to how his disability could impact his earning capacity, I will not venture into any conjecture to provide for any loss of income or loss of earning capacity. I will, therefore, take the amount of compensation as determined by the Tribunal as appropriate and adequate. I find no reason to interfere with the award.

14. The appeal in FAO No. 2855 of 2005 is dismissed.