

(2013) 07 P&H CK 0799
In the Punjab And Haryana At Chandigarh
Case No : FAO No's. 984 and 2068 of 2012

Sudha and Others

APPELLANT

Vs

Dalip Singh and Others
 Dalip Singh and Another Vs
I.C.I.C.I. Lombard General Insurance Company Limited and
Another

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 2(21)

Citation : (2014) 1 ACC 672 : (2014) ACJ 2060 : (2013) 172 PLR 163

Hon'ble Judges : Nawab Singh, J

Bench : Single Bench

Advocate : S.K. Jain in FAO No. 984 and Mr. B.S. Mittal in FAO No. 2068, 2072 and 2404, for the Appellant; Subhash Goyal, Advocate for Insurance Company, for the Respondent

Final Decision : Disposed Off

Judgement

Nawab Singh, J.—This judgment shall dispose of afore-mentioned three appeals and a civil revision arising out of same accident. FAO No. 984 of 2012 has been filed by widow, two minor children and mother of Dharam Pal (deceased) seeking enhancement of compensation.

2. FAOs No. 2068, 2072 and CR No. 2404 of 2012 have been filed by Dalip Singh-driver and Jagdish owner of tractor No. HR-24-B-5633.

3. Firstly, the facts. On December 23rd, 2009 Satbir, Dharam Pal and Harish were travelling on a motor cycle bearing No. HR-26-Z-3696. When they reached near Dhani Shera, tractor bearing No. HR-24-B-5633 came from opposite direction at a fast speed and driven by Dalip Singh in a rash and negligent manner and it struck against the motor cycle. The occupants of the motor cycle suffered injuries. The motor cycle was also damaged. Satbir died on the spot. Dharam Pal was firstly brought to Civil Hospital, Sirsa from where he was referred to Post-Graduate Institute of Medical Sciences, Rohtak but he was taken to Metro

Hospital, Hisar where he succumbed to his injuries on December 27th, 2009.

4. Sudha widow, Pankaj, aged 7 years, son, Alka Kumari, aged 5 years, daughter and Prema Devi-mother of Dharam Pal filed two claim applications u/s 166 of the Motor Vehicles Act bearing No. 135 and 136 of 2010 claiming compensation on account of death of Dharam Pal and damage to his motor cycle before the Motor Accident Claims Tribunal (for short "the Tribunal") Sirsa. It was pleaded that the deceased was 32 years old at the time of his death. He was Mechanic of the engines and was earning Rs. 7000/- per month.

5. Aforesaid claim applications were disposed of by the Tribunal vide Award dated October 28th, 2011.

6. Mahindro Devi mother of Satbir deceased also filed a separate claim application bearing No. 30 of 2010 before the Tribunal. The said claim application was decided by the Tribunal vide Award dated April 27th, 2011.

7. The Tribunal considering Dharam Pal (deceased) to be a labourer held his income at Rs. 4000/- per month because the claimants failed to prove that the deceased was a skilled labourer. Taking into consideration size of the family, deduction of ? was made for his personal and living expenses and the amount was calculated at Rs. 3000/-. Multiplier of 17 was applied and the dependency was assessed at Rs. 6,12,000/-. An amount of Rs. 76,722/- was also awarded for the expenses incurred by the claimants on the treatment of Dharam Pal (deceased). Besides, an amount of Rs. 10,000/- was awarded for funeral expenses. In all, compensation of Rs. 6,98,722/- was awarded along with interest at the rate of 9% per annum from the date of filing of claim application till its realization. In respect of damage to the motor cycle, the Tribunal awarded Rs. 6000/- as compensation.

8. Vide Award dated April 27th, 2011 the Tribunal awarded compensation of Rs. 3,94,000/- to mother of deceased Satbir along with interest at the rate of 9% per annum.

9. In both the Awards (dated October 28th, 2011 and April 27th, 2011), the insurance company was held liable to pay the amount of compensation giving the recovery right to recover the amount from the driver and owner of the tractor because it was held under issue No. 3 that the driver was not holding a valid driving licence to drive the tractor.

10. The widow, two minor children and the mother of Dharampal deceased by filing FAO No. 984 of 2012 have challenged the Award on the grounds that the income was assessed on lower side, nothing has been paid for loss of consortium and no addition of income was given for future prospects.

11. To refute the arguments, Sh. Subhash Goyal learned counsel for the insurance company has contended that since the deceased was self-employed so, no addition should be made towards future prospects.

12. Indeed, there is no cogent evidence except the bald statement of widow of the deceased that he was a Mechanic who repaired the engines. This being so, the Tribunal was right in holding the income of the deceased at Rs. 4000/- per month. In Santosh Devi Vs. National Insurance Company Ltd. and Others, the Hon"ble Supreme Court while commenting upon addition to the income for future prospects observed in paragraph No. 14 as under:-

14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed

wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation

13. The same view was taken by a full Bench of the Supreme Court in *Rajesh and Others Vs. Rajbir Singh and Others*, in which after referring to *Santosh Devi's* case (supra) it was held that in case where the deceased was self-employed, there should be increase of 30% in the income while computing future prospects.

14. In view of the ratio of the aforesaid authorities, as the deceased was 32 years old, addition of 50% of the income is made to the income of the deceased. Thus, the income comes to Rs. 6000/- per month (4000+2000). The Tribunal was right in deducting 1/4th from the income of the deceased. Deducting 1/4th the dependency comes to Rs. 45,00/- per month. Though, the Tribunal has applied multiplier of 17 which in opinion of this Court should have been 16 as per the authoritative guidelines issued in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, but since no appeal has been filed by the insurance company or the owner/driver of the offending vehicle so, this Court would not like to disturb the same. Otherwise too, economic condition of the deceased was such that he was considered to be a casual labourer. Applying the multiplier of 17, the amount comes to Rs. 9,18,000/- (6000 x 12 x 17). In *Rajesh and others* (supra), the deceased was 33 years old and left behind a widow and three minor children. The Hon''ble Supreme Court awarded a sum of Rs. 1 lac towards loss of consortium while observing in paragraph No. 20 as under:-

The ratio of a decision of this Court on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be, periodically revisited, as observed in *Santosh Devi Vs. National Insurance Company Ltd. and Others*, We may, therefore, revisit the practice of awarding compensation under conventional heads:

- (i) loss of consortium to the spouse;
- (ii) loss of love, care and guidance to children; and
- (iii) funeral expenses.

It may be noted that the sum of Rs. 2500/- to Rs. 10000/- under those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, it was held that compensation for loss of consortium should be in the range of Rs. 5000 to Rs. 10000/-. In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate.

That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., which the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world, more particularly in the United States of America, Australia, etc. English courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would be only be just and reasonable that the courts award at least Rs. 1,00,000/- towards loss of consortium.

15. Keeping in view the aforesaid observations and the fact that in the case on hand, the deceased was 32 years, this Court awards an amount of Rs. 1 lac towards loss of consortium to Sudha widow of the deceased. The amounts awarded for funeral expenses and medical expenses shall remain unaltered. Thus, the claimants are held entitled to total compensation of Rs. 11,04,722/-. The enhanced amount is Rs. 4,06,000/-.

16. The remaining two appeals bearing No. 2068 and 2072 and CR No. 2404 of 2012 have been filed by the driver and owner of the offending tractor impugning the finding of the Tribunal to the extent that it has wrongly given right to the insurance company to recover the amount of compensation from them. The Tribunal observed in the impugned Award that the driver was not holding a valid driving licence to drive the tractor because he was having a licence to drive light motor vehicle.

17. Section 2(21) of the Motor Vehicles Act defines "light motor vehicle" as under:-

Light motor vehicle means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms.

18. A reading of the definition of "light motor vehicle" shows that it includes a tractor also. It is not in dispute that the driver of the tractor was holding a licence to drive light motor vehicle. In view of the definition, the approach of the Tribunal was erroneous in holding that the driver was not holding a valid driving licence to drive the tractor. Thus, the findings of the Tribunal to the extent that the insurance company was given right to recover the amount of compensation from the driver and owner, is set aside. Accordingly, it is held that the amount of compensation shall be paid jointly and severally by the insurance company, driver and owner of the tractor. However, the insurance company shall not have

any right to recover the amount of compensation from the owner or the driver.

19. The interest on the enhanced amount of Rs. 4,06,000/- shall be paid by the insurance company from the date of filing of claim application till the amount was deposited by the insurance company under the impugned Award at the same rate of interest which was Awarded by the Tribunal. In upshot, for the reasons recorded supra, the appeals filed by the legal representatives of Dharam Pal and the owner and driver of the tractor are disposed of in the manner indicated above.