
(2016) 02 P&H CK 0442
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 393 of 2006

Ujala Bakhsi and Others

APPELLANT

Vs

Nirmal Singh and Others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Citation : (2016) 2 LawHerald 1175

Hon'ble Judges : Amol Rattan Singh, J.

Bench : Single Bench

Advocate : Mrigank Sharma, Advocate, for the Appellant;

Final Decision : Partly Allowed

Judgement

Amol Rattan Singh, J.—1. The four appellants in this appeal, seek enhancement of the compensation awarded to them by the learned Motor Accident Claims Tribunal, Panchkula, vide its Award dated 30.07.2005, by which a total compensation of Rs. 4,25,000/- was awarded to them, for the death of Iqbal Singh, husband of appellant No. 1 and father of appellants No. 2 to 4.

2. Iqbal Singh Bakshi is stated to have been travelling from Bareilly to Kolkata, driving his own truck bearing registration No. HR-37-7700, with Rattan Singh travelling alongwith him, as the cleaner of the truck.

At about 7:00 PM, when they reached near Methan O.P., at Sanjay Gandhi Chowk, Chirkunda barrier, Iqbal Singh is stated to have parked his truck on the left side of the road, in front of a hotel on the Bareilly Kolkata road. Another truck, bearing registration No. DL-IG-8685, is also stated to have been parked ahead of Iqbal Singhs" truck, both on the "kutcha" berm on the side of the road.

When Iqbal Singh was cleaning the wind screen/mirror of his truck, it was alleged that respondent No. 1, Nirmal Singh, started the other truck and reversed it, causing it to hit Iqbal Singh, who was unfortunately crushed between both the trucks and died on the spot due to multiple injuries suffered by him.

Thus, the accident is stated to have been taken place solely because of the negligence of respondent No. 1.

The learned MACT, upon evidence led before it, held respondent No. 1 guilty of negligence and awarded the aforesaid amount of Rs. 4,25,000/- as compensation to the appellants-claimants.

The respondents not being in appeal against the finding on negligence, this Court is only to consider the claim for enhancement of compensation, in this appeal.

3. Iqbal Singh was found to be 49 years of age by the learned MACT, on the basis of his date of birth given by appellant No. 1 (20.10.1953), though the post mortem report showed him to be 47 years of age.

On the basis of the income tax return filed by the deceased, for the year 2001-02, which was filed on 19.01.2003, i.e. before the death of Iqbal Singh, the learned Tribunal held that the annual income of the deceased was Rs. 48,000/-, though the subsequent return for the year 2002-03, filed on 12.03.2004, i.e. after his death, showed his income to be Rs. 1,55,400/-. Thus, holding the latter return to be exaggerated, his income was taken to be Rs. 48,000/-, as it was not shown that Iqbal Singh had bought an additional vehicle during the interim period, from which such a high increase in the income could have accrued, within one year.

To the above income of Rs. 48,000/- per annum, a deduction of 1/3rd was applied by the Tribunal, towards the personal expenses of the deceased, and the dependency of the appellants was thus worked out to be Rs. 32,000/- per annum.

A multiplier of 13 was applied and consequently, the total loss of income to the claimants (present appellants), was assessed as Rs. 4,16,000/-. A sum of Rs. 9000/- was awarded for the last rites of the deceased, though the appellants claimed that they had spent Rs. 30,000/- on the transportation of Iqbal Singh's body (from the Bareilly-Kolkata road to their home in District Panchkula) and on his last rites.

On the total compensation of Rs. 4,25,000/-, interest @ 7.5% per annum was awarded, from the date of institution of the claim petition till the date of realization of the amount. Nominal costs were also awarded.

4. Mr. Mrigank Sharma, learned counsel for the appellants, submitted that the learned Tribunal had firstly erred in only assessing the income of the deceased to be Rs. 48,000/-, in view of the fact that it was the specific averment of the appellants that Iqbal Singh had increased his income, from his business of transportation, from year to year, and as such, not taking into account his subsequent return showing an income of Rs. 1,55,400/-, for the year 2002-03, was a wholly erroneous perception by the learned Tribunal.

He further submitted that the Tribunal further erred in not awarding any loss of future prospects of income to the claimants, and in not awarding any amount for

the loss of consortium of her husband to appellant No. 1 and for loss of love and affection of their father, to appellants No. 2, 3 and 4.

He further submitted that, there being four dependents on the deceased, only a 1/4th deduction should have been made towards the personal expenses of the deceased, and not 1/3rd.

Lastly, he submitted that though the multiplier applied was correct, in terms of the law laid down in Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, , (2009) 6 SCC 121, the amount awarded towards expenses incurred for transportation of the body and last rites was highly inadequate, inasmuch as, obviously, it would have taken large expenses to transport the body back, over a long distance, to their home almost a thousand kilometer away.

5. None has appeared on behalf of Insurance Company, hence, obviously no submissions on its behalf were made.

However, as already stated, the issue of negligence not having been challenged by the respondents, only the issue of enhancement of compensation is to be gone into by this Court, on the basis of law settled in that regard, in the context of the facts of the case.

6. As regards the income of the deceased, as assessed by the Tribunal, I see no fault with the reasoning adopted by that forum, in view of the fact that it is surprising that an income tax return filed after the death of the deceased, showed an increase in income of Rs. 1,07,000/-, within one year, with no logical reasoning flowing for such an increase. Therefore, the Tribunal having found that no purchase of an additional vehicle was made, to augment the transport business that the deceased was running, the return filed for the year 2001-02 could only be taken to be the correct return, with the next return necessarily having to be ignored, being highly exaggerated.

Thus, this Court also holds the income of the deceased to be Rs. 48,000/-, on the basis of the income tax return filed for the financial year immediately preceding the year in which Iqbal Singh unfortunately died.

7. The next question is as to whether the cut towards personal expenses applied by the Tribunal, to the extent of 1/3rd of the income of the deceased, is correct or not.

As per the ratio of the judgment in Sarla Verma's case (supra), it was held that where the number of dependents is 2 to 3, a 1/3rd deduction should be applied and where such dependents are 4 to 6 in number, a 1/4th deduction is to be applied, on the premise that the deceased would normally spend less on himself, knowing that he had a large family to look after.

In the present case, the appellants-claimants are the 43 year old widow of the deceased and his three sons aged 24, 23 and 18 years respectively. Though one way of looking at that issue, would be that the sons being all adults, with

appellants No. 2 and 3 being above the age of 21 years at the time of the death of Iqbal Singh, they cannot be termed to be his dependents, however, since no evidence was led even by the respondent Insurance Company before the Tribunal, to show that at least these two claimants were earning on their own, it cannot be held that they had their own independent source of income; because, obviously, if they had no source of income, they could not prove the negative, of not earning anything. Thus, with all the claimants asserting their dependence on the deceased, the onus to prove that they were not earning at the first instance at least, would lie upon the respondents to show the contrary, that they were actually earning on their own, and were not dependent of their father. That not having been done, it has to be accepted that all the four appellants were dependent upon the income earned by the late Iqbal Singh.

Hence, instead of a 1/3rd deduction towards the personal expenses of the deceased, a 1/4th deduction is to be applied, as a result of which the annual loss of dependency to the appellants would be Rs. 36,000/- and not Rs. 32,000/-, assessed by the Tribunal.

8. Coming next to the issue of loss of future prospects of income, it is not denied that though Iqbal Singhs' children are young adults, he himself was only 49 years of age when he died. It was not refuted even before the Tribunal that the deceased himself was only 49 years of age.

Again, in view of the fact that he was stated to have been running a transport business and his sons are all young adults, it could be argued that the business can be continued by them. Though this issue has not been discussed at all in the Award of the Tribunal, it is seen that the appellants had contended before the Tribunal that it was not possible for them to run the business after Iqbal Singhs' death and that they would have to sell the truck. Obviously, that statement cannot be accepted at face value, but what is to be seen is that had Iqbal Singh remained alive, his income would have continued at least for the next 10 to 15 years, with prospective increases on account of inflation alone, apart from chances of increasing his business etc. On the other hand, of course, the business may have gone down or wholly floundered, dependent upon circumstances etc.

Even if it is taken that the family could still continue with the transportation business, it definitely gave them one earning hand less than would have been the situation had Iqbal Singh remained alive. Thus, the efforts and energy and resources that an experienced man would have put in towards his business, with possible help from his sons, or in the alternative, with the sons' earning something from different sources of living, are not factors that can be ignored and the fact remains that the individual income of the deceased, has been lost to his family. Therefore, in my opinion, loss of future prospects of income need to be awarded to the family of a deceased, even where the business may continue, (which in this case is not a certainty, the business being only with returns of Rs. 48,000/- per annum). To repeat, even if the business continued, there was an

experienced earning hand, who alongwith his family, could have continued the business to higher levels. Hence, the loss of an experienced person has to be factored in, while calculating the loss of income to his family. Therefore, in my opinion, the ratio of the judgments in Sarla Verma's case (supra) and subsequently, in Rajesh and others vs. Rajbir Singh and others, (2013)(9) SCC 54 and Vimal Kanwar and others vs. Kishore Dan and others, (2013)(7) SCC 476, on the loss of future prospects of income that could have been earned by the deceased, would need to be awarded to the appellants, even if the deceased was running his own business.

Hence, the prospective income has to be assessed, as per the ratio of the aforesaid judgments. It was held that 50% of the current income of the deceased is to be added to his actual income at the time of his death, where the deceased was below 40 years of age, if he was between 40 to 50 years of age, the increase would be 30% of his actual income and 15% if he was between 50 to 60 years of age. In this case, considering that Iqbal Singh was on the verge of the age of 50, being 49 years of age, 25% loss of future prospects of income would be adequate, in my opinion, instead of 30%.

Thus, the annual loss of future income would work out to Rs. 9000/-, being 25% of the annual dependency of Rs. 36,000/-, already assessed.

The multiplier of 13 having been correctly applied by the Tribunal, as per the law laid down in Sarla Verma's case (supra), the total loss of dependent income, including loss of prospects of future income, would work out to be Rs. 5,85,000/- (Rs. 36,000/- + Rs. 9000/- = Rs. 45,000/- X 13).

9. The funeral expenses would also need to be enhanced, in terms of the law laid down in Rajesh and others vs. Rajbir Singh's case and in Vimal Kanwar's case (supra), especially in this case, where the body had to be transported from at least 600 to 700 kms away. Hence, instead of the Rs. 9000/- awarded by the Tribunal, towards the transportation of the body and last rites, Rs. 25000/- is awarded to the appellants, as was awarded in the aforesaid cases, by the Supreme Court.

10. Lastly, coming to the issue of compensation for loss of consortium of appellant No. 1 and loss of love and affection of their father to appellants No. 2, 3 and 4, again following the ratio of the law laid down in the aforesaid cases of Rajesh and Vimal Kanwar, a sum of Rs. 1,00,000/- is awarded to appellant No. 1.

Though in the aforesaid cases, a sum of Rs. 1,00,000/- to Rs. 2,00,000/- was awarded for loss of love and affection of the deceased to their children, in the present case, the children of the deceased all being young adults, a sum of Rs. 75,000/- each, for the loss of love and affection of their father, is awarded to appellants No. 2, 3 and 4.

11. Hence, the total compensation now awarded to the appellants is Rs. 9,35,000/-, the break of which as follows:-

Thus, the amount of Rs. 4,25,000/- awarded by the Tribunal is enhanced by Rs. 5,10,000/-. The enhanced compensation amount would carry an interest @ 7% per annum, from the date of filing of the claim petition till the date of realization thereof.

12. Of the above enhanced Rs. 5,10,000/-, a sum of Rs. 1,00,000/- each shall be given to appellants No. 2, 3 and 4, alongwith interest accruing upon such amount, and the remaining amount of Rs. 2,10,000/- shall be paid to appellant No. 1, alongwith interest accruing thereupon.

This appeal is partly allowed in the above terms, with no order as to costs.