

Before Vijender Jain, C.J. & Jaswant Singh, JJ.

HARNAM KAUR & ANOTHER,—Appellants

versus

SUKHDEV SINGH & OTHERS,—Respondents

L.P.A. No. 723 of 1994 in

F.A.O. No. 984 of 1984

1st May, 2008

Constitution of India, 1950—Art. 226—Motor Vehicles Act, 1988—S. 110-A—Accidental death due to rash & negligent driving—Tribunal awarding compensation while deducting 1/3rd income of deceased as personal income and applying multiplier of 5—Single Judge modifying award by applying multiplier of 8—Claim for enhancement—Determination of compensation—Equitable, fairness and reasonableness—Appellants held entitled to enhancement of compensation by applying multiplier of 14.

Held, that while determining amount of compensation in cases of accidental deaths some guess work, hypothetical consideration and sympathy are also to be taken into consideration. The compensation to be so determined has to be “just compensation”. The Hon’ble Supreme Court has further held that the expression “just” denotes equability, fairness and reasonableness.

(Para 11)

Further held, that it would be just, expedient and appropriate to apply the multiplier of 14 instead of 8 applied by the learned Single Judge. Thus, the claimants-appellants are entitled to a compensation of Rs. 90,998 (Rs. $50 \times 12 \times 14 = 84,000$ plus medical expenses of Rs. 6998) along with interest @12% per annum from the date of filing of the petition.

(Para 13)

G. S. Punia, Advocate *for the appellants.*

R. K. Joshi, Advocate *for respondent No. 2.*

Gurminder Pal Singh, *for respondent No. 4.*

VIJENDER JAIN, CHIEF JUSTICE.

(1) The present Letter Patent Appeal has been filed by the claimant-appellants (widow and daughter of deceased-Bakhtawar Singh) against the judgment dated 13th September, 1993 passed by the learned single Judge,—*vide* which FAO No. 984 of 1984 was allowed and award dated 12th October, 1984 passed by the learned Motor Accident Claims Tribunal, Ludhiana (for short Tribunal) was modified and multiplier of 8 instead of 5 was applied and the claimants-appellants were held entitled to compensation of Rs. 54,998 (Rs. 48,000 + Rs. 6,998 as medical expenses). In addition, interest @ 12% per annum was granted from the date of filing of the claim petition.

(2) Facts giving rise to the matter in controversy are that claimants-appellants filed claim petition No. 46/117/6 of 1982-83 under Section 110-A of the Motor Vehicles Act (unamended) claiming that on 14th June, 1982 at about 8 p.m. Bakhtawar Singh-deceased husband of claimant-appellant No. 1 and father of claimant-appellant No. 2 was going from Ludhiana to his Village Sunet on foot when a truck being registration No. PBL 3072 being driven by Buta Singh-respondent No. 3 in a rash and negligent manner without headlights hit a motorcycle bearing registration No. PUM 3353 from behind and thus killing the motorcyclist on the spot. The truck came to a halt and truck driver Buta Singh ran away. At the same time a local bus bearing registration No. PUR 6328 belonging to Municipal Corporation, Ludhiana-respondent No. 2 came from the opposite direction at a very high speed driven by Sukhdev Singh-respondent No.1 and the bus slightly hit the truck from its right side. Driver Sukhdev Singh lost his control over the bus and struck one Dhanna Singh, who was going on a bicycle on the left side of the road, as a result of which he died on the spot and then the bus further hit Bakhtawar Singh, who was walking on the extreme left side of the road. Said Bakhtawar Singh fell unconscious and was admitted to Civil Hospital, Ludhiana and thereafter he was referred to C.M.C., Ludhiana where he succumbed to the injuries. The accident was witnessed by Mohinder Singh and Dr. V. K. Nayyar, who happened to be on the spot at the time of accident.

(3) Claimants-appellants (widow and daughter of deceased-Bakhtawar Singh) filed a claim petition seeking compensation to the tune of Rs. 2 lacs against the respondents. It was stated that deceased-Bakhtawar Singh aged 50 years was doing dairy farming the trading in cattle and was earning Rs. 2000 per month. Respondent No. 1 filed his written statement and denied the allegations for want of knowledge. However, he admitted that bus No. PUR 3628 belonged to Municipal Corporation, Ludhiana-respondent No. 2, who also denied the allegations in their written statement and submitted that the petitioners are not entitled to any compensation from the respondents and further the claim was highly exorbitant. It was further stated that deceased-Bakhtawar Singh suffered injuries due to rash driving of the truck bearing No. PBL 3072 being driven by Buta Singh and not their local bus, which was not involved in the accident at all. Plea of limitation was also raised.

(4) From the pleadings of the parties following issues were framed :—

“(1) Whether the accident took place due to the rash and negligent driving of driver Boota Singh (truck driver) ?
OPA

(2) Whether Bakhtawar Singh died as a result of accident i.e. arising out of use of motor vehicle i.e. Truck number PBL 3072 ? OPA

(3) If issue No. 1 and 2 are proved, what amount of compensation the claimants are entitled ? OPA

(4) Whether the claimants are legal representatives of Bakhtawar Singh deceased ? OPA

(5) Relief.

(5) After framing of the issues the claim petition filed by the present claimant-appellants was ordered to be consolidated with claim petition No. 77/32/7 of 1982-83 titled as Suraj Kiran and others *versus* Buta Singh and others. Learned Tribunal decided issued Nos. 1 and 2 in both the claim petitions jointly and came to the conclusion that truck

came in a rash and negligent manner, struck against the motorcyclist and it also struck against the bus which was also being driven in a rash and negligent manner, which further killed cyclist Dhanna Singh and pedestrian Bakhtawar Singh and the issues were decided in favour of the claimants. Regarding issue No. 4, claimant Harnam Kaur and her daughter Balwinder Kaur were held to be legal representatives of the deceased-Bakhtawar Singh.

(6) So far as issue No. 3 relating to determination of the amount of comopensation, learned Tribunal recroded a finding in para No. 19 of the award dated 12th October, 1984 that there is no reliable evidence of income of deceased Bakhtawar Singh though his wife has stated his income to be Rs. 2,000 per month from dairy farming and trading in cattle. Learned Tribunal held that there was no cogent evidence on record to show that income of deceased Bakhtawar Singh was Rs. 2,000 per month. Consequently, it assessed the income of deceased at Rs. 400 per month as an ordinary labour, out of which after deducting 1/3rd as his personal expenses it came to Rs. 267 and thus his annual income came to Rs. 3204. The learned Tribunal applied the multiplier of 5 keeping in view the age of the deceased and held the claimants to be entitled to a compensation of Rs. 16,020 from respondent Nos. 1 and 2 i.e. Sukhdev Singh and Municipal Corporation, Ludhiana, respectively.

(7) Aggrieved against the award dated 12th October, 1984 passed by the learned Tribunal, claimants-appellants filed FAO No. 984 of 1984 and prayed that they are entitled to compensation to the tune of Rs. 2 lacs plus Rs. 20,000 as expenses on treatment alongwith interest @ 12% per annum. The said FAO was decided by the learned single Judge,—*vide* judgment dated 13th September, 1993, modifying the award by taking monthly income of the deceased-Bakhtawar Singh as Rs. 750 per month and after deducting 1/3rd as his personal expenses, dependency of the claimants was taken at Rs. 500 per month. Learned single Judge taking into account 52 years' age of the deceased at the time of his death and that he would have worked as a Labourer for at least 58 years applied the multiplier of 8 instead of 5 and granted compensation of Rs. 54,998 (Rs. $500 \times 15 \times 8 = 48,000$ + Rs. 6,998 as medical expenses) alongwith interest @ 12% per annum from the date of filing of the claim petition.

(8) Dis-satisfied with the judgment dated 13th September, 1993 by the learned single Judge, claimants-appellants have filed the present Letter Patent Appeal and have claimed compensation of Rs. 2 lacs plus Rs. 20,000 as expenses for treatment alongwith interest @ 12% per annum from the date of filing of the claim petition.

(9) We have heard learned counsel for the parties.

(10) It was submitted by the learned counsel for the appellants that Harnam Kaur appeared as AW4 and deposed that Bakhtawar Singh deceased was aged 50 years at the time of his death and the multiplier of 16 should have been applied. There is no rebuttal to this evidence by the respondents that the deceased was not 50 years of age at the time of accident. It was further submitted that claimant No. 2 Balwinder Kaur daughter of the deceased Bakhtawar Singh was unmarried at the time of death of her father. It was then submitted that the learned Tribunal as well as learned Single Judge have wrongly deducted 1/3rd income of the deceased as his personal income as it does not appear to reason that a labourer who has an unmarried daughter can afford to spend 1/3rd of his income as personal expenses.

(11) Law is well settled that while determining amount of compensation in cases of accidental deaths some guess work, hypothetical consideration and sympathy are also to be taken into consideration. The compensation to be so determined has to be a "just compensation". The Hon'ble Supreme Court has further held that the expression "just" denotes equitability, fairness and reasonableness. The relevant extracts of para 4 of the judgment rendered by the Hon'ble Supreme Court in **Ashwani Kumar Mishra versus P. Muniam Babu and others**, (1) is reproduced as under :—

“He has claimed his income to be Rs. 2,000 per month. The appellant, a young man cannot be disputed to be contributing and augmenting the income of his father. Some guesswork has to be applied while assessing the loss. This Court in **R. D. Hattangadi versus Pest Control (India) (P) Ltd.**, had held (SCC p. 556 para 9)

“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money ; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant : (i) medical attendance ; (ii) loss of earning of profit up to the date of trial ; (iii) other material loss. So far non-pecuniary damages are concerned, they may include : (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future ; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run, or sit, (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened, (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

It was further held that whenever a tribunal or court is required to fix the amount of compensation in case of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability cause. However, all such elements are required to be viewed with objective standards. While assessing damage, the court cannot base its opinion merely on speculation or fancy though conjectures to some extent are inevitable.”

(12) The Hon'ble Supreme Court in **Divisional Controller KSRTC versus Mahadeva Shetty and another**, (2) in paras 12 and 15 has laid down as under :—

“12. It is true that perfect compensation is hardly possible and money cannot renew physique or frame that has been battered and shattered, as stated by Lord Morris in *West versus Shephard*. Justice required that it should be equal in value,

although not alike in kind. The object of providing compensation is to place the claimant as far as possible in the same position financially as he was before the accident. Broadly speaking, in the case of death the basis of compensation is loss of pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at the precise mathematical calculation ; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded. Upjohn, I. J. in *Charterhouse Credit versus Tolly* remarked, “the assessment of damages has never been an exact science ; it is essentially practical” (All ER p. 443 C).

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(15) It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be “just”. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages, fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to

be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza ; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to be it to be just", a wide discretion is vested in the Tribunal, the determination has to be "rational", to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness and non-arbitrariness. If it is not so, it cannot be just. (*See Rabello versus Maharashtra SRTC*)."

(13) Keeping in view the facts and circumstances of the case and the ratio of the law laid down by the Hon'ble Supreme Court in the judgments referred to above, it would be just, expedient and appropriate to apply the multiplier of 14 instead of 8 applied by the learned single Judge. Thus, the claimants-appellants are entitled to a compensation of Rs. 90,998 (Rs. $500 \times 12 \times 14 = 84,000$ plus medical expenses of Rs. 6,998) alongwith interest @ 12% per annum from the date of filing of the petition.

(14) Compensation already awarded by the tribunal and enhanced by the learned single Judge and paid shall be adjusted.

(15) Present appeal stands allowed to the extent indicated above.

(16) No order as to costs.

R.N.R.