

(2011) 05 P&H CK 0237

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 2140 of 2010 (O and M)

National Insurance
Company Limited

APPELLANT

Vs

Jaspal Kaur and
Others

RESPONDENT

Date of Decision: May 17, 2011

Acts Referred:

- Motor Vehicles Act, 1988 - Section 170

Citation: (2013) ACJ 1481 : (2012) 1 ILR (P&H) 61

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Judgement

K. Kannan, J.

I. Death of an agriculturist, challenge to quantum

1. The appeal is by the Insurance Company challenging the quantum of compensation assessed by the Tribunal. The Insurance Company had the benefit of defence on all grounds u/s 170 of the Motor Vehicles Act by the order of the Tribunal dated 30.06.2009. The Insurance Company is aggrieved against the assessment of compensation of Rs. 14,29,000/- for the death of an agriculturist, who was holding 12 acres of land. The Tribunal took the income of the deceased at Rs. 12,000/- per month against the statement of the widow that her husband was earning Rs. 40,000/- per month.

II. Setting the basics - where land is still available, whole income cannot be relevant

2. In the case of agriculturist, it must be remembered that the income from the land itself ought not to be the sole consideration for determining the loss arising out of the death. The attempt must be made to secure evidence of the value of the services of the deceased for managerial skills of the agricultural land. The Supreme Court

said, while dealing with the issue of assessment of compensation for the death of an agriculturist in a motor accident, in *State of Haryana v. Jasbir Kaur* (2003-3) 135 PLR 414 (SC). "The land possessed by the deceased still remains with the claimants as his legal heirs. There is, however, a possibility that the claimants may be required to engage persons to look after the agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered..." (Para 8). Income from land does not come month-wise. Such evidence is artificial and hardly convincing. The attempt must be, therefore, to secure evidence which is credible. The evidence regarding agricultural income and the manner of determining the value of services could come through various ways. I would outline them, since this is a repeated theme and the Tribunals do not secure the best evidence. The parties do not adduce the nature of evidence that is necessary to help the Tribunal to determine appropriate compensation. The repeated exhortation of various Courts from the Hon'ble Supreme Court to High Courts have been to look for evidence of the value of loss of the managerial skills of the land in question. In *Ponnumani @ Krishnan and Another v. V.A. Mohanan and Others* (2008-3) 151 PLR 426 (SC), the contention was that the injured claimant who was an agriculturist and who had 100% disability was having 5 acres of land. In the absence of convincing evidence, the Court declined to interfere with the mode of assessment of taking the income conventionally at Rs. 15,000/- per annum. In *V. Subbulaxmi and Others v. S. Laxmi* (2008-2) 150 PLR 270 (SC), the Supreme Court accepted the evidence of income at Rs. 12,500/- per month as coming from agricultural operations and as commission agent and stated in a resigned tone that there was a certain guesswork was inevitable, if there was no appropriate evidence. There have been invariably ad hoc approaches by taking Rs. 1500/- to Rs. 3000/- pm as the value of the services of an agriculturist in several other cases. For instance, in *Gurdeep Kaur v. Tarsem Singh* (2008-1) 149 PLR 362, this court had assessed the value of managerial skills of deceased owning 7 acres of agricultural land at Rs. 3000/- in relation to the death that took place in 1989. For an agricultural laborer, an assessment of income of Rs. 1500/- was made in *Oriental Insurance Company Ltd. v. Smt. Mantari (Widow)*, (2008-2) PLR 175. In yet another case decided in the same year, the same court determined the compensation for death of an agricultural laborer at Rs. 2,500/- per month in *Karamjit Kaur and Others v. Kulbir Singh and Others* (2008-2) PLR 769. In another judgment in *Inderjit Kaur v. Bikhar Singh* (2007-1) 145 PLR 581, the value of services of an agriculturist has been assessed at Rs. 2000 pm. The approaches are not far from satisfactory and, therefore, I would make an attempt to suggest some methods of determining the value of the services of a person, who died leaving some lands which could generate income.

III. Preparing ground

I step: Determine the status of agriculturist as landowner, lessee or agricultural labour or a combination of the above.

II. Step: Extent of land held, nature of land and the crops cultivated per year. III Step: Assessment of net income that reflects the value of services cast on the land with deduction for the availability of land/estate after the death of the person.

IV. Methods of determination of loss of income

3. (i) One method of assessing the loss could be to secure evidence of the income from the property if the deceased was himself cultivating the land personally. If there is evidence that such personal cultivation is not any longer possible for want of adequate human resources in the family, and if evidence is led that the property had been leased out and the lease amount is known, the difference between the net income which the deceased was earning and the lease that the property would fetch would mean the actual loss arising to the family. As an example, if the property was capable of yielding a net income of Rs. 25,000/- per annum by the personal cultivation of the deceased and if after the death, the property could not be personally cultivated and the property had been let out on lease, say, for Rs. 15,000/-, the difference between the amounts namely, Rs. 25,000/- minus Rs. 15,000/- viz., Rs. 10,000/- would constitute the loss occasioned by the death of the agriculturist per year. The compensation must then be proceeded to be computed on that basis. What the land could fetch as lease is indeed what the land could fetch without labour by the family. That income is available for the family; that is the amount that the estate could fetch even in the absence of the deceased. That amount can never be added as the loss arising out of the death of the agriculturist.

(ii) Alternatively, if there is no member of the family, who could effectively engage himself or herself in agriculture operations after the death of the deceased and the property were to be cultivated and managed by hiring the services of the persons, then the cost of such services would itself be an indicator of the value of the services. For example, if the deceased had been employing labour on land and realizing a net income of Rs. 25,000/- per annum after payment of labour charges and after the death, a person is hired to manage the land and give the family the income. Any amount that would be necessary to pay the person who managed the land together with any shortfall in income that could have arisen by the changed circumstance for any deficient service of the person engaged in the service could be taken to be the loss to the family. For example, if the net income after the expenses for agricultural operations of the same extent of land as the first illustration above were to yield Rs. 20,000/- instead of Rs. 25,000/- and the family had to pay Rs. 10,000/- for the person, who was managing the field in lieu of the deceased, then the loss is Rs. 15,000/-, (being the shortfall in revenue (i.e) Rs. 5000 + charges paid to the person to manage the land (i.e)Rs. 10,000/-).

(iii) Without indulging in all the arithmetic, a quicker solution could be to take what a person would have earned as an agricultural labour. The landowner's value (where there is evidence that he possessed agricultural lands) could never be less than the value of such labour. One can add 25% of the amount and take that to be the value

of managerial skills of the landowner. This method could be adopted when the holding of the deceased is small and he would qualify for being termed as a "small farmer" or "marginal farmer", as per Reserve Bank guidelines or State's formulations for aiding the lot of agriculturists. This could also be useful where the evidence is deficient for a tribunal to assess and make possible some hypothetical projections, without being too much off the mark. The minimum wages for the labour is not merely what an agriculturist could be earning month after month. An approximation that the agriculturist could be productively employed for 9 months in a year could still be justified. If the minimum wages for an agricultural laborer is Rs. 3,300/- per month, the average annual income that could be estimated for a small farmer owning lands could be Rs. $3,300 \times 1.25 \times 9 =$ Rs. 37,125/-. Here, "1.25" represents the increase by 25% and "9" represents the number of productive months of income per year.

V. Method of determining income, i) Collecting data from official records

4. Determining income realized itself is different from assessment of loss. Agricultural operations may not at all times be capable of precise calculation as given above. It must, however, be remembered that some approximation is inevitably made in all motor accident claims and, therefore, the attempt must be to bring the projection which is close to reality than merely allowing the parties to let in unrealistic and unsubstantiated evidence on what the deceased was earning from the land, such as the evidence in this case that suggests that the deceased was earning Rs. 40,000 per month. Such type of evidence could hardly be helpful, for, like we have observed above, lands are not like fixed deposits yielding a return every month. Again, by the death of a person, the land does not vanish. The property, on the other hand, continues in specie and the income is still realizable from the property even after the death of the person. Unlike the death of a wage earner or a salaried person, who by his death leaves nothing to the family in financial terms, the land yields income after the death of the land owner to his or her legal representatives, even without labour, such as what could be stated about the lease amount. There must be appropriate evidence wherever possible through production of any accounts, whenever are maintained. If an agriculturist is a small farmer or is illiterate and no accounts are maintained, the nature of crops raised in the land is verifiable from the cultivation accounts (like, khasra Girdawari, (as is called in Punjab and Haryana), adangal (as is called in Tamil Nadu) etc.,) maintained by the revenue officials in village. The cultivation accounts would not merely show the crop pattern, it would also show the number of crops raised in the land. For example, the form of khasra girdawari mentioned in Punjab Land Records Manual in Chapter 9 in the topic Harvest Inspections would contain the following:

Prices of grains fetched from the Market Committee or any authorized agencies should afford the best evidence. Attempt must be made to adduce evidence about the average price of the grains at the relevant time and the crop pattern in the land

which the deceased held. The prices of grains are periodically notified by the respective State governments through agricultural departments after analysis of market conditions and they could be easily picked up from the web portals of the State government. If the nature of crops raised in the land is known through cultivation accounts, it is possible to even gather the average yield per acre that could have come through the land from the data released by the governments.

ii) Detailing expenses

5. Agricultural income does not come from the blue. It is wrought out of hard labour and after considerable expenses for purchase of seeds, cost involved for water, electricity charges, tractor hire, fuel costs, labour for sowing and harvesting, government levies, etc. If there is evidence for all the items of expenditure, it is most ideal. Otherwise, making an approximation between 30 to 50% of the gross income could be taken as expenses, depending on the nature of land as fertile or otherwise, availability of water through government source, canal or bore well facilities.

iii) Courts' duty

6. It is most unsatisfactory that the Tribunals merely take an arbitrary sum in the range of Rs. 3,000/- to Rs. 4,000/- in all cases where an agriculturist dies as the income per month. Perhaps, it becomes inevitable that the Tribunals or the High Courts adopt such arbitrary exercises since the parties do not themselves adduce the appropriate kind of evidence. The Tribunals have a different duty to perform while adjudicating claims for compensation for death of persons in motor accidents. Unlike an adversarial litigation, where the parties will fight out on the issues of facts and law and the Court would adjudicate on the basis of evidence chosen to be adduced by the parties, the Tribunal must be pro-active in its approach to secure the best evidence to bring succor to the family when a person dies by demanding the evidence which it thinks as necessary for assessment of compensation justly. It could be done either by requiring certain type of evidence to be given relating to the income, its crop pattern, the average yield per year, etc. and elicit from the State Department of Agriculture about the average yields of crops, their average prices, etc. The information technology and the data pooled in the web sites would offer the best guide. For example, in the State of Punjab, evidence could be picked up to date on agricultural yield of various crops per acre and the prices prevailing during various years in www.agripunjab.gov.pk. In the State of Haryana, statistics are available at <http://agriharyana.nic.in/information.htm>. It is also possible to gather statistics from the local Labour Department for the minimum wages applicable for agricultural labour as well as the cost of grains during the relevant time when the assessment is made. In these days of information technology, all relevant data will be available through Government departments themselves. The data is available in labour.nic.in/wagescell/wages/punjabwages.pdf; hrylabourgov.in/MNNotif.pdf. These are mere guidelines for future course of action.

VI. The present disposition in this case

7. CW1-wife gave evidence that her husband was earning about Rs. 40,000/- per month from 12 acres of land. CW2-Naib Singh gave evidence to the effect that the deceased was doing work of agriculture by cultivating his own land with his tractor and he had been keeping buffalos also for the sale of milk. In the cross-examination, it was suggested that he was not doing the work of agriculture and that he was not having any buffalos for the sale of milk. CW2 was the nephew of the deceased and he stated that he was having 7/8 buffalos and he used to sell 35/40 kilogram of milk daily.

8. The petitioner has not placed even the nature of lands which the deceased possessed, whether it was wet or dry, the nature of crops that he was raising his land and how she is coping with the situation of managing the agricultural land after the death of the deceased. Gleaning through the evidence let in by party in this case, there is hardly any evidence worthwhile for a Tribunal to come to the conclusion that the deceased was earning Rs. 12,000/- per month. The evidence that has come through the widow and the nephew are too skeletal to make any meaningful assessment. Having set out the principles, I am loathe to making arbitrary conjectures for determining the loss occasioning to the family of the deceased who was alleged to have held 12 acres of land and 7-8 buffaloes. I will provisionally determine Rs. 5 lakhs as compensation payable which will be distributed in the same proportion as the award already determined. The insurance company shall be liable to make the payment. The award is otherwise set aside and the matter is remitted to the Tribunal for fresh determination in the light of the guidelines given above. I have made this direction for remand only in view of the fact that the case is not relatively too old and the family's distress could be assuaged by the interim compensation determined and help the parties to arrive at a compensation which is reasonable and just by letting in appropriate evidence.

9. The appeal is disposed of as above.

10. For appearance of parties before the Tribunal at Fatehgarh Sahib on 10.06.2011.