

Neutral Citation No. - 2024:AHC-LKO:42789

Reserved

Court No. - 5

Case :- FIRST APPEAL FROM ORDER No. - 470 of 2011

Appellant :- Smt. Manju And Ors.

Respondent :- Santosh Kumar Pandey And Another

Counsel for Appellant :- Satyendra Srivastava, Amit Tripathi

Counsel for Respondent :- Govind Chaturvedi, Vaibhav Raj

Hon'ble Manjive Shukla, J.

1. Heard Sri Amit Tripathi, learned counsel appearing for the appellants and Sri Govind Chaturvedi, learned counsel appearing for Opposite Party No.2.

2. The appellants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation awarded vide order dated 22.2.2011 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.5, Faizabad in M.A.C.P. No. 180 of 2010 (Smt. Manju and others Vs. Santosh Kumar Pandey and another).

3. Facts of the case, in brief, are that Mr. Dinesh Kumar was moving on his motorcycle bearing Registration No.UP42-P/4915 and when he was on his left side on Jalalpur Kuchera road, one motorcycle bearing Registration No.UP42-M/3094 tried to overtake him and since one Pickup vehicle was also trying to overtake, in that process motorcycle No. UP42-M/3094 was hit by the Pickup vehicle and ultimately that motorcycle collided with motorcycle No.UP42-P/4915

and as a result Mr. Dinesh Kumar suffered serious injuries and was referred to Medical College at Lucknow but while he was being carried to Medical College, he died.

4. The claimants filed M.A.C.P. No. 180 of 2010 and pleaded that Mr. Dinesh Kumar had died due to negligence of the person driving motorcycle No. UP42-M/3094. The claimants also pleaded that at the time of accident motorcycle No. UP42-M/3094 was insured with Opposite Party No.2 i.e. Iffico Tokio General Insurance Company Limited.

5. Learned Motor Accident Claims Tribunal after appreciating the evidence available on record has held that the accident in question took place due to negligence of the person driving motorcycle No. UP42-M/3094 and since the said motorcycle was insured with Respondent No.2 i.e. Iffico Tokio General Insurance Company Limited therefore, Respondent No.2 is liable to pay compensation to the claimants and accordingly, vide order dated 22.2.2011 has directed for payment of compensation amounting Rs.2,23,000/- to the claimants along with simple interest at the rate of 6% per annum from the date of presentation of the claim petition till the date of actual payment.

6. Learned counsel appearing for the appellants has submitted that the claimants led evidence before the learned Tribunal that deceased Dinesh Kumar was running a rice mill but learned Tribunal in absence of categorical evidence on record allowed only notional income of Rs.15,000/- per annum and by adding Rs.3,000/- the total income of the deceased was calculated as Rs.18,000/- per annum and on

that basis, the compensation has been calculated whereas the Hon'ble Supreme Court in the case of **Laxmi Devi and others Vs. Mohd. Tabbar and another, (2008) 2 TAC 394** has held that when there is no cogent proof of income of the deceased, then his notional income must be taken as Rs.3,000/- per month i.e. Rs.36,000/- per annum therefore, the learned Tribunal while treating the income of the deceased as Rs.15,000/- per annum has acted in gross violation of law laid down by the Hon'ble Supreme Court, as such the compensation awarded to the claimants needs to be enhanced by taking the income of the deceased as Rs.36,000/- per annum. Learned counsel appearing for the appellants in respect of notional income has also relied on judgment and order dated 29.1.2020 rendered by this Court in **F.A.F.O. No. 1908 of 2014 (United India Insurance Co. Ltd. Vs. Room Singh and others)** and judgment and order dated 9.3.2016 rendered by the Division Bench of this Court in **F.A.F.O. No. 840 of 2016 (Oriental Insurance Company Limited Vs. Lallu Ram Mishra and others)**.

7. Learned counsel appearing for the appellants has further argued that learned Tribunal while calculating the income available to the dependents has deducted one-third income from the total income of the deceased whereas the Hon'ble Supreme Court vide its judgment rendered in the case of **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** has provided that where the number of dependent family members exceeds six, one-fifth of the income of the deceased should be deducted from his total income towards his personal expenses

and therefore, in view of the aforesaid judgment rendered by the Hon'ble Supreme Court, the learned Tribunal ought to have deducted one-fifth of the total income of the deceased i.e. one-fifth of Rs.36,000/- and thereafter the compensation payable to the claimants ought to have been calculated.

8. Learned counsel appearing for Opposite Party No.2 i.e. Iffico Tokio General Insurance Company Limited has argued at length but could not deny that the Hon'ble Supreme Court in its judgment rendered in the case of **Laxmi Devi (supra)** has provided that in absence of any proof of income, the notional income of a person should be taken as Rs.3,000/- per month i.e. Rs.36,000/- per annum and further he also could not dispute that the Hon'ble Supreme Court vide its judgment rendered in the case of **Sarla Verma (supra)** has provided that where the number of dependent family members exceeds six, only one-fifth of the income of the deceased should be deducted from his total income to arrive at the income of the deceased available for the dependents for the purposes of calculation of compensation.

9. I have considered the rival arguments advanced by the learned counsels appearing for the parties and I find that learned Tribunal in its order dated 22.2.2011 has recorded a finding that claimants could not prove the income of the deceased therefore, notional income of the deceased has been taken as Rs.15,000/- per annum and in the said income Rs.3,000/- per annum has been added and thereby his total income has been calculated as Rs.18,000/- per annum.

10. The Hon'ble Supreme Court vide its judgment rendered

in the case of **Laxmi Devi (supra)** has categorically held that where there is no proof of income of the deceased, his notional income should be taken as Rs.3,000/- per month i.e. Rs.36,000/- per annum. For ready reference, relevant paragraphs of the judgment rendered in the case of **Laxmi Devi (supra)** are extracted as under:

"4. The High Court confirmed the earlier findings regarding the negligence of death. However, the High Court came to the conclusion that though the claim of the income of Rs.4200/- per month was not reliable, the notional income should have been held to be Rs.36,000/- per annum, i.e., Rs.3,000/- per month. For this proposition the High Court held that the notional income of Rs.15,000/- in the Second Schedule was prescribed in the year 1994 while the accident had taken place in the year 2004. The second reason given by the High Court was that even an unskilled labourer, these days, can easily earn Rs.100/- per day and Rs.3,000/- per month and, therefore, the High Court held the income to be Rs.36,000/- per annum and by deducting 1/3rd of the income of the deceased for his personal expenses, the claimants dependency was assessed at Rs.24,000/- per annum. However, the High Court reduced the multiplier of 16 applied by the Tribunal to 12. For this action, the High Court relied on the aforementioned judgment in T.N. Transports Corporations case. The High Court thus applied the multiplier of 12 instead of 16 and ultimately the High Court arrived at the figure of Rs.2,88,000/- and to this the other compensation on account of funeral expenses, loss of consortium to the widow and loss of estate, which were granted by the Tribunal, were added and the total compensation of Rs.2,97,000/- was awarded by the High Court. The claimants, dissatisfied with this finding, have filed this appeal before us.

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7. Considering the above principles in this case, we must say that the High Court has definitely erred in bringing down the multiplier to 12. It is to be seen that in this case the deceased was 35 years old. The claimants are his wife and four minor daughters. Even as per the Second Schedule the multiplier in case of the persons between 35 to 40 years is 16. In the present case the rate of interest granted is only 6% considering the general rate of interest prevalent in 2004. In our opinion, therefore, the proper multiplier would be 14 as the value of the notional income has been increased. It was nobodys case that the deceased was not working at all. His wife has entered in the witness box and had asserted that he earned Rs.140/- per day. Even if we ignore the exaggeration, the figure arrived at by the High Court at Rs.100/- per day and Rs.3,000/- per month appears to be correct. However, considering that the claimant would get only 6% interest, we would chose to grant the multiplier of 14 instead of 12. Accordingly the notional income as applied would be Rs.24,000 x 14 = Rs.3,36,000/- and to this will be added the other compensation like Rs.2,000/- as funeral expenses, Rs.5,000/- for the loss of consortium to the widow and Rs.2,000/- for the loss of estate. The claimants would, therefore, be entitled to a sum of Rs.3,45,000/-. The said sum shall carry the interest at the rate of 6% per annum from the date of claim petition."

11. The Division Bench of this Court relying on the aforesaid judgment rendered by the Hon'ble Supreme Court

in the case of **Laxmi Devi (supra)** has decided **F.A.F.O. No. 840 of 2016** vide order dated 9.3.2016 and has held that the notional income of a person has to be fixed as Rs.3,000/- per month i.e. Rs.36,000/- per annum. The relevant paragraph of the judgment and order dated 9.3.2016 is extracted as under:

"On the question of quantum of compensation, in the absence of any documentary evidence to establish the allegation that deceased was earning a sum of Rs.4000/- per month, the Tribunal relying upon the judgment of the Hon'ble Apex Court in the case of Smt. Laxmi Devi Vs. Md. Tabbar & Ors., 2008 (2) TAC 394, took his notional income to be Rs.3000/- per month. The Tribunal also awarded 50% towards future prospect in accordance with the dictum of the Hon'ble Apex Court in the case of Rajesh & Ors. Vs. Rajveer Singh & Ors., 2013 (2) ACC 969, after deducting 1/3rd towards personal expenses determined a sum of Rs.24,000/- per annum as income of the deceased. The Tribunal applied a multiplier of 17 and after adding 50% towards future prospect, the amount of compensation was determined as Rs.6,12,000/-. Tribunal also awarded a sum of Rs.5000/- towards funeral expenses, Rs.5000/- towards loss of estate and Rs.10,000/- towards loss of love and affection. In this manner, total amount of compensation payable to the claimants determined by the Tribunal worked out to be Rs.6,32,000/-."

12. The co-ordinate Bench of this Court has also decided **F.A.F.O. No. 1908 of 2014** vide judgment and order dated 29.1.2020 wherein reliance has been placed on the judgment of the Hon'ble Supreme Court rendered in the case of **Laxmi Devi (supra)** and it has been held that in absence of any proof of earning of a person, his notional income should be taken as Rs.3,000/- per month i.e. Rs.36,000/- per annum. The relevant paragraph of the judgment and order dated 29.1.2020 is extracted as under:

"6. So far as monthly income of the deceased is concerned, the claim has been set by the claimants that the deceased was doing agricultural activities and dairy business and he was earning Rs.8000/- per month. The opposite parties have disputed the income of the deceased stating that he did not have any income nor the claimants were dependent upon the deceased. Learned Tribunal has taken a view that since there is no record of income of the deceased, therefore, in the light of law laid down by Supreme Court in Mohd. Tabbar vs. Laxmi Devi 2009 (2) T.A.C. 394, the annual income of the deceased should be taken to Rs.36,000/- per annum, i.e. Rs.3000/- per month and after deducting 1/3rd for his personal expenses, and looking the age of deceased about 20 years, as per II Schedule of Motor Vehicle Act, Tribunal applied multiplier of 16 and has granted a compensation of Rs.3,84,000/- (24000x16). This apart, Rs.2,000/- has been granted for funeral expenses and for loss of estate Rs.2500/- has been granted. In this matter, the Tribunal has awarded total compensation of Rs.3,88,500/

(3,84,000+2000+2500=3,85,000/-) in favour of the claimants alongwith 6% interest from the date of filing of the claim petition i.e. 19.12.2011 till the date of actual payment."

13. Thus, from the aforesaid judgments it is patently manifest that the learned Tribunal while taking the notional income of the deceased as Rs.15,000/- per annum has acted in gross violation of law laid down by the Hon'ble Supreme Court as well as by this Court therefore, it can be safely concluded that the notional income of the deceased for the purposes of calculation of compensation payable to the claimants is to be taken as Rs.36,000/- per annum.

14. This Court further finds that the Hon'ble Supreme Court vide its judgment rendered in the case of **Sarla Verma (supra)** has held that where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death for the purposes of calculation of compensation payable to the claimants and further has held that where the number of dependent family members exceeds six, only one-fifth of the income of the deceased should be deducted from his total income towards his personal expenses. For ready reference, the relevant paragraphs of the judgment rendered by the Hon'ble Supreme Court in the case of **Sarla Verma (supra)** are extracted as under:

"24. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being

applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

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30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependant family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."

15. Thus, this Court is of the view that as per law laid down by the Hon'ble Supreme Court in the case of **Laxmi Devi (supra)** and in the case of **Sarla Verma (supra)**, the notional income of the deceased should be taken as Rs.36,000/- per annum and since the dependent family members in the present case are more than six therefore, one-fifth of the income must be deducted from the total income towards personal expenses of the deceased.

16. In view of the aforesaid reasons, this appeal is partly allowed. The order and award dated 22.2.2011 passed by the Motor Accident Claims Tribunal, Faizabad in M.A.C.P. No. 180 of 2010 is modified and the claimants/appellants are entitled for compensation calculated as under:

Sl.No.	Particulars	Amount
(i)	Total annual notional income of the deceased.	Rs. 36,000/-
(ii)	Total annual income of the deceased available for the dependents. [Rs.36,000 - Rs.7200 (one-fifth of income of the deceased)]	Rs. 28,800/-
(iii)	Since the age of the deceased at the time of accident was 30 years therefore, multiplier of '18' is applicable.	
(iv)	Compensation payable to claimants (Rs.28,800 x 18)	Rs. 5,18,400/-
(v)	Amount of loss of consortium to Claimant No.1	Rs. 5,000/-
(vi)	Funeral expenses	Rs. 2,000/-
	Total compensation payable to the claimants (iv + v + vi)	Rs. 5,25,400/-

17. Apart from the aforesaid enhanced compensation of **Rs.5,25,400/-** claimants are also entitled for simple interest at the rate of 6% per annum from the date of filing of the claim petition till the date of actual payment.

18. The apportionment of the compensation shall be as per the award dated 22.2.2011 passed by the Motor Accident Claims Tribunal, Faizabad.

19. Respondent No.2 i.e. Iffico Tokio General Insurance Company Limited, Gurgaon, Haryana is directed to deposit the enhanced amount of compensation along with interest with the Motor Accident Claims Tribunal, Faizabad within two months from today, failing which the claimants shall be entitled for simple interest at the rate of 9% per annum over the enhanced amount of compensation, till the amount is deposited before the concerned Tribunal.

Order Date :- 10.6.2024

Salim