

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 875 of 2000

DATE OF DECISION : 01.12.2017

Mrs. Sunita Sharma and others

.... APPELLANTS

Versus

Ram Pal and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. A.S. Virk, Advocate,
for the appellants.

Mr. Suvir Dewan, Advocate,
for respondent No.3 – Insurance Company.

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AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 06.10.1999 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal').

The factual matrix of the present case are that on 12.11.1995, Vipin Kumar Sharma, aged 36 years, along with Anoop Giri, was going in his car bearing temporary registration No. CH-16-9912 (Applied for) from Mandi Gobindgarh to Delhi. In the way, his car was struck by a rashly and negligently driven tanker bearing registration No. HR-45/1381. As a result of the accident, Vipin Kumar Sharma suffered injuries and lost his life.

The legal heirs of the deceased filed a claim petition under

Section 166 of the Motor Vehicles Act, 1988.

The Tribunal, after appreciating the facts and considering the evidence produced before it, awarded a sum of ₹ 3,85,000/- along with interest at the rate of 12% per annum.

Aggrieved of the said award, the claimants filed the present appeal for enhancement of compensation.

I have heard learned counsel for the parties and perused the paper-book and all the relevant documents.

Learned counsel for the appellants argued that the Tribunal has erred in relying upon the Income Tax return filed for the assessment year 1994-95, in which income of the deceased for the period from 01.04.1993 to 31.03.1994 was shown as ₹ 35,860/-. He argued that the return for the assessment year 1995-96 was filed, in which the income of the deceased was shown as ₹ 5,15,900/-. His contention is that the last return should have been accepted. He further argued that no future prospects have been awarded by the Tribunal. His grievance is that the amount awarded under the conventional heads is on the lower side.

Learned counsel for respondent No.3 – Insurance Company contended that the Tribunal rightly relied upon the income tax return of the deceased for the financial year 1994-95, as the return for the year 1995-96 was filed on 16.07.1998, i.e. two years and eight months after his death. He defended the award and resisted any further enhancement of compensation.

The contention of learned counsel for the appellants that the

Tribunal erred in relying upon the income tax return for the assessment year 1994-95 has no merits and is liable to be rejected. The income tax return is the safest yardstick to assess the earning of a person. According to the return for the year 1994-95, the deceased was earning ₹ 3,000/- per month, which was accepted by the Tribunal. There is no quarrel on the proposition that the return for the financial year, during which Vipin Kumar Sharma lost his life should have been taken into consideration. But in the present case, the last return filed for the assessment year 1995-96 cannot be relied upon for the reason that it was filed about two years and eight months after the death of the assessee. There is another aspect to be considered that the claim petition was instituted on 22.03.1996 and the last return for the year 1995-96 was filed on 16.07.1998, i.e. almost after two years and four months of the institution of the claim petition. The income shown in the last return is exorbitantly high as compared to the return for the earlier year of 1994-95. No evidence worth reliance was brought on record by the claimants to show that there was a sudden rise or a windfall gain for the deceased during the assessment year 1995-96. Even otherwise, it is not a plain and simple case, where an ordinary person was not knowing the duties and liabilities under the Taxation Act. The father of the deceased himself was a taxation consultant, as is evident from the deposition of PW.1 Sunita Sharma, widow of the deceased.

For the aforesaid reasons, no fault can be found in the award of the Tribunal in taking monthly earning of the deceased as ₹ 3,000/-.

The contentions raised by learned counsel for the appellants that future prospects should have been awarded to the claimants and the amount awarded under the conventional heads is on the lower side, deserve acceptance in view of the law laid down by the Hon'ble Apex Court in its latest decision in **National Insurance Company Limited Vs. Pranay Sethi and others**, Special Leave Petition (Civil) No. 25590 of 2014, decided on 31.10.2017. In the concluding para of the said decision, it has been held as under :-

“61. In view of the aforesaid analysis, we proceed to record our conclusions :-

(i) to (iii) x x x

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) to (vii) x x x

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/-

respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

As per the above decision, where the deceased was self-employed or on a fixed salary and was below 40 years, 40% future prospects should be added to his established income. It has further been held that an amount of ₹ 70,000/- is to be awarded under the conventional heads, i.e. ₹ 15,000/- for loss of estate, ₹ 40,000/- for loss of consortium and ₹ 15,000/- for funeral expenses.

In the present case, there is no dispute with regard to the age of the deceased, the deductions made for self expenses and the multiplier applied by the Tribunal. The loss of dependency is re-calculated after adding 40% future prospects to the established income of the deceased :-

Annual income	₹ 36,000/-
Add 40% future prospects	₹ 14,400/-
Total income after adding future prospects	₹ 50,400/-
Less 1/3 rd deductions for self expenses	₹ 16,800/-
Dependency after deducting self expenses	₹ 33,600/-
Loss of dependency by applying multiplier of 15 33,600 x 15	₹ 5,04,000/-
Loss of estate	₹ 15,000/-
Loss of consortium	₹ 40,000/-
Funeral expenses	₹ 15,000/-
Total	₹ 5,74,000/-

In view of the above, the award dated 06.10.1999 is modified to the extent that the compensation of ₹ 3,85,000/- awarded by the Tribunal is enhanced to ₹ 5,74,000/-.

The appellants shall be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

December 01, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes