

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

201

FAO No.1115 of 2004

Decided on :29.11.2017

Amrit Kaur and another

... Appellants

Versus

Gurdarshan Singh and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Ms.Shreya Vasishtha, Advocate for
Mr.Puneet Jindal, Advocate
for the appellants.
Mr.D.S.Kahlon, Advocate for respondent No.1.
Mr.V.K.Garg, Advocate for Insurance Company.

Avneesh Jhingan, J. (Oral)

The present appeal has been filed against the award dated 19.12.2003 passed by Motor Accident Claims Tribunal, Jalandhar (for short, 'the Tribunal').

The record of this case was burnt and has been reconstructed from the salvaged record and copies supplied by counsel subject to just exceptions.

The factual matrix necessary for adjudication of the present appeal are that Narinder Singh aged 37 yrs. lost his life in a motor vehicular accident that occurred on 19.10.2000. He was going on a scooter to Jalandhar. His scooter was struck by rashly and negligently driven truck bearing registration No.PAT 4287. As a result of the accident, he died on the spot.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased.

The Tribunal awarded a sum of Rs.5,28,000/- along with interest at the rate of 9% per annum.

The present appeal has been filed for enhancement of compensation awarded by the Tribunal.

I have heard learned counsel for the parties, perused the paper-book and the record.

Learned counsel for the appellants argues that the deceased was a teacher in the government school and was getting salary of Rs.8337/- per month. Her grievance is that the Tribunal has wrongly considered his salary as Rs.7502/-. She further contended that no future prospects have been awarded. Her further grievance is that multiplier of 11 has been applied whereas deceased was 37 years and multiplier of 15 should have been applied. She contends that no amount has been awarded under the conventional heads.

Learned counsel for the respondents defended the award and resisted any enhancement. They argued that the salary of Rs.8337/- cannot be considered as it includes the deduction made for GPF and GIS. They could not raise any serious issue with regard to grant of future prospects, multiplier and the conventional heads.

The contention raised by learned counsel for the appellants deserves acceptance. It is the gross salary which has to be considered while calculating the loss of dependency. Reliance in this regard is made to the judgment of Apex Court in case of *Manasvi Jain Vs. Delhi Transport Corporation, 2014 (3) RCR (Civil) 313*, wherein Hon'ble Apex Court while observing that only deduction towards income tax/surcharge

alone should be considered to arrive at the net income of the deceased, observed as under :-

“12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 :

(2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that “while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.

13. In the present case, there is no dispute about of the salary of the deceased. As per salary certificate, his monthly income and deductions are as under:

Monthly Income Deductions ` 26,950-00

Provident Fund ` 8,000-00

House Rent ` 525-00

G.I.S. ` 120-00

Income Tax ` 2,500-00

So, from the above table, it is clear that except an amount of Rs.2,500/- towards Income Tax, rest of the amounts were voluntarily contributed by the

deceased for the welfare of his family. Considering the decision of this Court in Shyamwati Sharma & Ors., (supra), in our opinion, except contribution towards Income Tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary. Hence, the take home salary of the deceased comes to Rs.24,450/- which can be rounded to Rs.25,000/-”

In the above decision, it has been held that it is the gross salary minus income tax payable which has to be considered.

In the present case, the total earning of the deceased during the relevant year was less than the taxable income and no deduction of income was required to be made. Parties have not raised any issue with regard to involvement of the offending vehicle and rash and negligent driving of the offending vehicle.

In such circumstance, loss of dependency is recalculated keeping in view the law laid down by the Apex Court in case of **Sarla Verma & Ors Vs. Delhi Transport Corp.& Anr, 2009(3) RCR**

(Civil), 77.

As far as the future prospects is concerned, there is a latest decision of the Hon'ble Apex Court in **National Insurance Company Limited** Vs.**Pranay Sethi and Ors.** (Special Leave Petition (Civil) No. 25590 of 2014) decided on 31.10.2017 in which it has been held as under:-

- (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
- (v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.
- (vi) The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with paragraph 42 of that judgment.
- (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.

The salary of the deceased is rounded to Rs.8340/- per month.

The recalculation is made as under:-

Sr.No.	Heads	Amounts
1	Annual income	Rs.1,00,080/-
2	50% Future prospects	Rs.50,040/-
3	1/3 rd deduction for self expenses	Rs.1,50,120- 50,040=Rs.1,00,080/-
4	Applying Multiplier of 15	15,01,2001
5	Loss of estate	Rs.15,000/-
6	Loss of consortium	Rs.40,000/-
7	Funeral expenses	Rs.15,000/-
	Total	Rs.15,71,200/-

The award dated 19.12.2003 is modified to the extent that the

amount of Rs.5,28,000/- is enhanced to Rs.15,71,200/-

The claimants 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 the realization of the amount.

The appeal is allowed in the above said terms.

[Avneesh Jhingan]
Judge

29.11.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No