IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

223

FAO No.718 of 2002 (O&M)
Decided on : 02.11.2017

Amar Singh

... Appellant

Versus

Ajaib Singh

.. Respondent

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Ajay Kumar Sharma, Advocate
for the applicant-appellant.

Mr.Neeraj Khanna, Advocate for
Mr.Ravinder Arora, Advocate for respondent No.3.

Avneesh Jhingan, J. (Oral)

CM Nos.485-486-CII of 2016

There is application seeking condonation of delay in filing the application for restoration and an application for restoration of the appeal as well.

Learned counsel for the Insurance Company has no objection if the applications are allowed.

CMs are allowed and the appeal is restored to its original number.

Main case is taken on board with the consent of both parites.

FAO No.718 of 2002

The present appeal is against the award dated 5.9.2001 passed by the Motor Accidents Claims Tribunal, Patiala (for short 'the Tribunal').

2. The present appeal has been filed by the claimants for

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enhancement of the amount awarded by the Tribunal as compensation for death of Bhajan Kaur.

3 Bhajan Kaur aged 45 years lost her life in a motor vehicular accident on 15.5.1998. She was travelling in a jeep bearing registration No.PBM-3303. The said jeep was struck by a tanker bearing registration No.PBP 5910, as a result of the accident, she suffered multiple injuries and lost her life. FIR was also logged.

4 On the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the Tribunal awarded a sum of Rs.1,58,000/- along with interest at the rate of 9% per annum.

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

6 The grievance raised by learned counsel for the appellant is two fold, firstly that the deceased was a house wife and her monthly income has been taken as Rs.1000/- per month only which is on the lower side and the multiplier of 13 has been wrongly applied instead of 14. Secondly, he contended that the amount awarded under conventional heads is of Rs.2000/- only

7 Learned counsel for the respondents has argued that the amount awarded is just and equitable. Hence, no more enhancement is called for.

8 The contention of the learned counsel for the appellant with regard to multiplier to be applied is fully supported by the decision of the Hon'ble Supreme Court in **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (civil) 77.** As per the said decision, a multiplier of 14

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should have been applied when the deceased was 45 years old.

9 So far the determination of monthly income of a house wife is concerned, the duties of the house wife are 24 X 7. She works without any remuneration. The love and affection of the family keeps her going. Apart from looking after the family, she performs the matrimonial duties as well.

10 The Hon'ble Apex Court in ***Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others***, 2015 (4) SCC 237, has held as under:

> "Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

11 Hon'ble Apex Court has held that the duties of the house maker cannot be underestimated and it is very difficult to equate the same in monetary terms.

12 From a perusal of the award, it is evident that the Tribunal has equated the contribution of the deceased house wife with the salary of the maid. It is unfortunate that the contribution of mother, wife and a house maker has been equated with salary of a maid which is kept after her death.

13 Keeping in view the age of the deceased and the fact that she

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was survived by husband and two minor children, her monthly earning is assessed at Rs.2500/- per month and the multiplier of 14 is applied as per the decision of the Apex Court in case Sarla Verma case (supra).

14 The contention raised by learned counsel for the appellant with regard to conventional heads is now fully covered by the latest decision of the Hon'ble Supreme Court in ***National Insurance Company Limited*** Vs. ***Pranay Sethi and Ors.*** SLP (Special Leave Petition (Civil) No. 25590 of 2014) decided on 31.10.2017. The Apex Court held as under:-

> "61. In view of the aforesaid analysis, we proceed to record our conclusions:-
> (i) The two-Judge Bench in *Santosh Devi* should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma*, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
> (ii) As *Rajesh* has not taken note of the decision in *Reshma Kumari*, which was delivered at earlier point of time, the decision in *Rajesh* is not a binding precedent.
> (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 48 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.
> (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) 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.
> (vii) The age of the deceased should be the basis for applying the multiplier.

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(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."

15 Keeping in view of the law laid down, the amount under conventional heads that are to be awarded as under:-

16 The amount awarded by the Tribunal under funeral expenses at Rs.2000/- is enhanced to Rs.15000/- and another sum of Rs.40,000/- for loss of consortium. The amount awarded by the Tribunal is enhanced as per table given below:-

Sr.No.	***Heads***	***Compensation awarded by Tribunal***	***By this Court***
1	Loss of dependency	156000	2500 X 12 X 14 =4,20,000/-
2	Funeral expenses	2000	Rs.15,000/-
3	consortium	-	Rs.40,000
	Total		**4,75,000**

17. The award dated 5.9.2001 is modified to the extent that the amount of Rs.1,58,000/- awarded by the tribunal is enhanced by **Rs.4,75,000/-**.

17 The claimants shall be entitled to enhanced amount along with interest at the rate of 6% from the date of filing of the claim petition till its realization.

18 Petition stands partly allowed with the above modification.

[Avneesh Jhingan]
Judge

02.11.2017
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No

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