IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2077-2005 in/and
Cross-objections No.58-CII of 2005
Date of decision: 13.11.2017

National Insurance Company Ltd. .... Appellant

Versus

Rajinder Kaur and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Naveen Kapoor, Advocate
for the appellant.

Mr.D.S.Sandhu, Advocate
for respondents No.1 to 4.

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Avneesh Jhingan, J.

These two cases i.e. one FAO and one cross-objection have been filed against the award dated 03.12.2004 passed by Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as the 'Tribunal').

The factual matrix necessary for adjudication of the present appeal are that in the intervening night on 28/29.06.2002, Harnek Singh (deceased) lost his life in a motor vehicular accident. FIR No.118 dated 29.06.2002 was registered at Police Station Ladwa. The deceased was a school teacher, having a monthly salary of Rs.10,471/-.

The legal heirs of the deceased filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'). The Tribunal awarded a sum of Rs.9,31,360/-along with interest @ 9% per annum. The amount awarded include Rs.10,000/- for funeral expenses.

There is no dispute by either of the parties regarding the involvement and negligent driving of the offending vehicle. Even the age of the deceased and his salary has not been disputed.

I have heard the learned counsel for the parties and perused the paperbook.

Learned counsel for the Insurance Company has argued that the Tribunal erred in taking the gross salary of the deceased for assessing the compensation. His contention is that various contributions and allowances should not have been considered while calculating the compensation. He further contends that even the income tax has not been deducted.

Learned counsel for the claimants, on the other hand, argued that it is the gross salary which is to be considered for assessing the loss of dependency. He further stated that he has filed the cross-objections on the ground that the multiplier of 11 was wrongly applied though the age of the deceased was 49 years. He further argued that only Rs.10,000/- has been awarded for funeral expenses which is on the lower side and no amount has been awarded under the conventional heads.

Learned counsel for the Insurance Company though resisted the argument of learned counsel for the claimants but could not raise any serious objection to the multiplier to be applied and with regard to the amounts to be awarded under the conventional heads.

The contention raised by learned counsel for the Insurance Company that it was only the basic salary which has to be taken into consideration while calculating the compensation cannot be accepted. The

Hon'ble Apex Court in ***Manasvi Jain vs. Delhi Transport Corporation, 2014(3) SCC 22*** held 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."*

As per the above decision, it is the gross salary which has to be taken into consideration less income tax amount.

The contention of learned counsel for the claimants with regard to the multiplier deserves acceptance in view of the law laid down by the Hon'ble Apex Court in in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** *observed as under :-*

> *"21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the*

> *Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

As per the above decision, the multiplier of 13 is to be applied in case of 49 years old deceased.

The latest decision of the Hon'ble Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors. in SLP (Civil) No.25590 of 2014 decided on 31.10.2017*** has held that the age of the deceased should be the basis for applying the multiplier.

As per the decision, multiplier is to be applied as per the age of deceased.

In the present case, the deceased was 49 years, the multiplier of 13 has to be applied. The loss of dependency is recalculated by taking the figure of salary as it is assessed by the Tribunal and thereafter making the deduction of 1/3rd for personal expenses, deducting a sum of Rs.10,000/- for income tax which has been agreed by learned counsel for both the parties as per the calculation made. The loss of dependency is re-calculated as under:-

Income	Rs.10,471/-
Annual income	Rs.10471x12=Rs.1,25,652/-
Income tax deduction	Rs.1,25,652-10,000=Rs.1,15,652/-
1/3rd deduction for self expenses	Rs.38,552/-
Dependency	(Rs.Rs.1,15,652-38,552) =77,100/-
Applying multiplier of 13	Rs.77,100 x13=Rs.10,02,300/-

The second contention raised by learned counsel for the claimants with regard to the conventional heads deserves acceptance in view of the latest decision of the Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra).*** The relevant part whereof reads as under:

> *"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs.25,000/- towards funeral expenses, Rs.1,00,000/- loss of consortium and Rs.1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though* ***Rajesh*** *refers to* ***Santosh Devi****, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on*

percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on *percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."*

As per the decision above, the amount to be awarded under the conventional heads has been restricted to Rs.70,000/- i.e. Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium.

Keeping in view the facts of the case and the decision referred above, the amount of Rs.10,000/- awarded under the conventional heads is enhanced to Rs.70,000/-.

The award dated 03.12.2004 is modified to the extent that the amount awarded by the Tribunal of Rs.9,31,360/- is enhanced to Rs.10,72,300/-.

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

The appeal and cross-objections are partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

13.11.2017
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1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes