

FAO No. 1645 of 2011 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1645 of 2011 (O&M)

Date of Decision: 31.10.2017.

Smt. Asha Rani and others

.....Appellants

Versus

Manish Kumar and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B.S. Rathee, Advocate
for the appellants.

Mr. Lalit Kumar, Advocate for
Mr. Ashwani Talwar, Advocate
for respondent No.2- Insurance Company.

AVNEESH JHINGAN, J.

The present appeal has been preferred by the claimants against the award dated 15.10.2010 passed by Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as the 'Tribunal') for enhancement of the compensation.

The brief facts necessary for adjudication of the present appeal are as under:

On 14.08.2009, at around 7.00 p.m. Labh Singh (since deceased) was coming from Fuwara Chowk towards Raipur Rani Chowk, Naraingarh on his motorcycle bearing registration No.HR-04A-1809. He was driving the motorcycle at a moderate speed on the left side of the road. When he reached near Raj Nursing Home, Naraingarh, the motorcycle of Labh Singh was struck by an Indica car bearing registration No.PB-50-3421 (hereinafter to be referred as the offending car) which was coming on the

Wrong side and was driven by respondent No.1 in a rash and negligent

manner. Labh Singh suffered multiple grievous injuries as a result of the accident. He was taken to PGIMER, Chandigarh. On 15.08.2009, he succumbed to injuries.

The claim was filed by the widow, one major son, one minor son and the parents of Labh Singh, claiming an amount of Rs.50 lakhs along with interest @ 12%..

After considering the evidence and hearing learned counsel for the parties, the Tribunal awarded compensation of ₹ 17,59,991/- along with interest at the rate of 7.5% per annum.

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

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

Learned counsel for the appellants argued that the Tribunal while awarding the compensation, has not correctly taken the salary of the deceased. He argued for enhancement by taking the carry home salary. He argued that amount awarded under conventional heads are on the lower side. He challenged the deduction for self expenses also by relying upon the decision of Hon'ble the Apex Court in *Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121*.

Learned counsel for respondent No.2 – Insurance Company resisted any enhancement. However, he could not raise any serious objection for deciding the case in accordance with law as per decisions of Hon'ble the Apex Court.

The Hon'ble Apex Court in *Manasvi Jain Vs. Delhi Transport*

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:

<i>Monthly Income</i>	<i>Deductions</i>
	<i>₹26,950-00</i>
<i>Provident Fund</i>	<i>₹8,000-00</i>
<i>House Rent</i>	<i>₹ 525-00</i>
<i>G.I.S.</i>	<i>₹120-00</i>
<i>IncomeTax</i>	<i>₹2,500-00</i>

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/-”

The Hon'ble Apex Court in **National Insurance Company Ltd. Vs. Smt. Saroj and others, 2009 (3) RCR (Civil) 431** held as under : -

“14. The amount of compensation which is required to be determined by the Tribunal must be just. In certain situations as for example in the case of the death of only son to a mother, no monetary compensation would be sufficient. Whereas the court, while determining the amount of compensation, should consider the amount of monetary loss which had been and would be suffered by the heirs and legal representatives of the deceased, the same should not be a windfall. It is for the aforementioned purpose, not only the take home salary is to be taken into consideration but also other allowance and perks which would have benefited the entire family.”

Similarly, in **National Insurance Company Ltd. Vs. Indira Srivastava and others, 2008 (1) RCR (Civil) 359**, observed as under :-

“17. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been

added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.”

From the above decisions, it is clear that it is not the take home salary which is to be considered but the deductions towards income tax/surcharge alone is to be made and other perks are to be included.

Without expressing any opinion on the merits of the case, the matter is remitted back to the Tribunal to be decided afresh in accordance with law.

The parties are directed to appear before the Tribunal on December 22, 2017.

Appeal is disposed of accordingly.

31.10.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No