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

FAO-921-2010 (O&M)
Date of decision: 06.12.2017

Chander @ Chanderpati and others .... Appellants

Versus

Anil Kumar Gill and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Amit Kumar Jain, Advocate
for the appellants.

Mr. Govind Chauahan, Advocate
for respondent No.1.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.2.

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Avneesh Jhingan, J.

The present appeal has been filed against the award dated 22.07.2009 passed by Motor Accidents Claims Tribunal, Jind (hereinafter referred to as the 'Tribunal').

On 12.09.2007, Baljit Singh, aged 51 years lost his life in a motor vehicular accident. He was going on his bicycle and was hit by rashly and negligently driven Maruti Car bearing registration No.HR-05DU-6030 (for short, 'the offending vehicle"). As a result of the accident, Baljit Singh suffered multiple injuries and ultimately lost his life. FIR No.183 dated 12.09.2007 was registered.

The 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 after considering the facts and appreciating the evidence, awarded a sum of Rs.7,78,000/- along with interest @ 7.5% per annum. The said amount awarded included Rs.10,000/- under the conventional heads.

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

The parties have not disputed the involvement of the offending vehicle, rash and negligent driving of the offending vehicle and age of the deceased.

Learned counsel for the appellants has argued that the deceased was working as Keyman in Northern Railway and was drawing salary of Rs.12,984/- per month. The said salary was proved by salary certificate as Ex.PW3/A. The Tribunal took the salary of deceased as Rs.9600/- per month. His grievance is that gross salary should have been considered. He contended that multiplier of 10 has been applied by the Tribunal whereas the deceased was 51 years of age and multiplier of 11 should have been applied. He further contended that the deceased was survived by four dependents and deduction for self expenses has wrongly been made. His grievance is that amount awarded Rs.10,000/- under the conventional heads is also on the lower side.

Learned counsel for the Insurance Company has contended that the income has rightly been assessed because it is the take home salary which is to be considered, not the gross salary.

With regard to the other contention though he resisted the enhancement but could not raise any serious issue in view of the settled position of law in latest verdict 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.***

The issue raised by learned counsel for the appellants that it is a gross salary which is to be considered, the Hon'ble Apex Court has held that it is the gross salary, which is to be considered minus the income tax payable on the salary. Since the salary is Rs.12984/- per month which would be rounded up to Rs.13,000/- The annual salary would come to Rs.1,56,000/-

Keeping in view the nil slab under Income Tax Act during the relevant assessment year and the fact that the deceased was entitled to deductions, the said salary would not be taxable.

The Hon'ble Apex Court in case ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77*** has given the tables with regard to the multiplier to be applied and deductions to be made for self expenses. Since the deceased was 51 years of age, therefore, a multiplier of 11 should be applied. The deceased is survived by four dependents, therefore, 1/4th deduction for self expenses has to be made. The deceased was government employee having a permanent job, in such circumstances, 15% future prospects has to be added for calculating the loss of dependency.

The contention of learned counsel for the appellants vis-a-vis conventional heads deserves acceptance as Rs.70,000/-(i.e. Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate and Rs.40,000/- for loss of consortium) has to be awarded in view the decision of the Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra).***

The compensation is recalculated as under :-

Monthly income	Rs.13,000/-
Add 15% future prospects	Rs.1950/-
Total income	Rs.13,000+1950=Rs.14,950/-
Annual income	Rs.14950x12=Rs.1,79,400/-
1/4th deduction for self expenses	Rs.44,850/-
Dependency	Rs.1,34,550/-
Applying multiplier of 11	Rs.14,80,050/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.15,50,050/-

The award dated 22.07.2009 is modified to the extent that the amount awarded by the Tribunal of Rs.7,78,000/- is enhanced to Rs.15,50,050/-.

The claimants would 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 is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

06.12.2017
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1.Whether the order is speaking/reasoned: Yes/No

2.Whether the order is reportable : Yes/No