

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

FAO-95-2010
Date of decision: 11.08.2017

New India Assurance Company Ltd.

.... Appellant

Versus

Raj Rani and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Ashwani Talwar, Advocate
for the appellant.

None for respondents No.1 to 5.

Avneesh Jhingan, J.

The appeal has been preferred by the New India Assurance Company Ltd. (hereinafter referred to as 'Insurance Company') against the award dated 01.10.2009 passed by Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal'). The Tribunal while deciding the claim petition under Section 166 of the Motor Vehicles Act filed by the widow, three minor children and mother of the deceased, awarded a sum of Rs.15,31,000/- as compensation along with interest @ 7.5% per annum.

Aggrieved of the said award, the Insurance Company has filed the present appeal. The brief facts necessary for adjudication of the present appeal are that on the intervening night of 2/3.01.2007, Surinder Kumar (deceased) was driving car No.CH-03-X-4609 along with Satpal on Delhi-Chandigarh, G.T.Road. At about midnight, car reached Nillokheri area there it was struck

by a Trax bearing registration No.HR-37-B-7396. The Trax was driven by Dharamvir in a rash and negligent manner. As a result of the accident, Surinder Kumar suffered multiple injuries and ultimately succumbed to the injuries. The criminal case was also registered.

The claimants filed a claim petition claiming that the deceased was 45 years of age. He was working as a Distributor with Government Press, U.T.Chandigarh. A salary certificate was produced showing that the deceased was earning a monthly salary of Rs.10,629/-. The Tribunal on the basis of the evidence and after examining the witnesses held that the accident occurred due to rash and negligent driving of Dharamvir. It was held that driver of the offending vehicle was holding a valid licence. The monthly salary of the deceased was taken to be Rs.10,000/-. 30% increase was made to the last pay drawn. 1/4th deduction towards personal expenses was made. Keeping in view 45 years age of the deceased, a multiplier of 13 was applied. A compensation of Rs.15,31,000/- was awarded. Rs.5,000/- for loss of consortium and Rs.5,000/- on account of last rites and funeral expenses were given.

The Insurance Company in the present appeal has raised the issue that the Tribunal should have apportioned the compensation in 50:50 ratio as the collusion was head on collusion and it cannot be said that the driver of Trax was only responsible for causing the accident.

The facts, evidence and witnesses were considered by the Tribunal and thereafter, the Tribunal decided that the accident was caused because of rash and negligent driving of Dharamvir, the driver of Trax bearing registration No.HR-37-B-7396. Before the Tribunal, claimants examined Kewal Krishan an eye witness as PW3 who filed an affidavit stating that the

car driven by the deceased bearing registration No.CH-03-X-4609 was going ahead of him on its correct left side and was being driven at a normal speed. He further stated that the Jeep No.HR-37-B-7396 came from the opposite direction on the wrong side. The said offending vehicle was at a very high speed and was driven by Dharamvir in a rash and negligent manner. As a result, the said Trax struck the car.

No contrary evidence was produced by the respondents before the Tribunal. The driver of the offending vehicle who was the most important witness never appeared in the case and was proceeded against exparte. It may be noted that even FIR (Ex.P1) was also filed.

The appellant has neither disputed this finding of the Tribunal nor they have disputed the witnesses and the evidence. The case of the appellant is that since it was head on collision therefore, it was a contributory negligence. The fact as born out from record is that the car driven by the deceased was going at a normal speed on the left side of the road whereas the offending Trax was coming on the wrong side and hence there was a head on collision. In view of these circumstances, no fault can be found out with the finding of the Tribunal on the said issue and no negligence can be attributed to the driver of the car (deceased).

The Insurance Company in appeal has raised the second issue that the Tribunal has taken the gross monthly salary of Rs.10,629/- for calculating the compensation and has further given 30% increase. The grievance made in the appeal is that the take home salary of Rs.6400/- per month should have been considered. 30% increase should not have been granted and further since the deceased was 45 years of age, the multiplier of 13 should not have been

applied.

The salary certificate was produced as Ex.P4, the deceased was working as Distributor in the Government Press and his salary certificate was sufficient proof to show that he earned a monthly salary of Rs.10,629/- per month. Keeping in view the salary certificate (Ex.P4), the salary was taken Rs.10,000/- per month.

Before proceeding further to deal with the argument regarding the actual salary of the deceased, it may be pointed out that details of deductions made from the gross monthly salary of Rs.10,629/- for arriving at the figure of Rs.6,400/- per month as take home salary have not been mentioned.

The Hon'ble Apex Court in **Manasvi Jain Vs. Delhi Transport Corporation, 2014 (3) RCR (Civil) 313**, 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:

<i>Monthly Income Deductions</i>	<i>Rs.26,950-00</i>
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/-”

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. In this view of the matter, the salary of the deceased to the tune of Rs.10,000/- taken by the Tribunal cannot be reduced.

The next plea raised by the appellant that 30% increase should not have been granted by the Tribunal is also ill founded. In this regard, the

Hon'ble Apex Court in **Kalpanaraj and others Vs. Tamil Nadu State Transport Corporation, 2014 (2) RCR (Civil) 876**, observed as under :-

*“9. As per the Income Tax return of the financial year 1994-1995 produced on record, the deceased was earning Rs.88,660/- per annum or Rs.7330/- per month. Further, the deceased being 46 years of age at the time of death, he is entitled to 30% increase in the future prospects of income as per the legal principle laid down by this Court in **Santosh Devi v. National Insurance Company Ltd. And Ors., 2012 (2) R.C.R.(Civil) 882 : 2012 (2) Recent Apex Judgments (R.A.J.) 505 : (2012)6 SCC 421.***

Further, this Court in **Punjab State Bus Stand & Management Company Ltd. (PUNBUS) and others Vs. Harjit Kaur and others, 2016 (2) LAR 269** (FAO No. 1771 of 2014, decided on 15.03.2016) granted 30% increase in the income of the deceased, who was 44 years old, while following the law laid down in **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170**, and held as under :-

*“13 However, perusal of the award shows that no amount was added to the income of the deceased computing future prospects. In view of law laid down in **Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170** as the age of the deceased was 44 years, the claimants are entitled to*

increase in the income of the deceased by 30% considering his future prospects. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1	<i>Monthly income of the deceased (in Rupees)</i>	<i>Rs.7500/-</i>
2	<i>Actual age of the deceased</i>	<i>44 years</i>
3	<i>Increase in future income as per Rajesh and others case (supra)</i>	<i>Rs.2250/-</i>
4	<i>Annual dependency</i>	<i>3/4 of Rs.9750 x 12 = Rs.87,750/-</i>
5	<i>Multiplier</i>	<i>14</i>
6	<i>Total</i>	<i>Rs.12,28,500/-</i>

In view of the decisions mentioned above and keeping in view the fact that age of the deceased was 45 years and he was an employee in the Government Press, 30% increase in his income made by the Tribunal cannot be reduced.

The next challenge of the appellant to the applying of multiplier of 13 by the Tribunal cannot be accepted. The deceased was 45 years old and was employed in the Government Press as a Distributor.

In *Shashikala and others Vs. Gangalakshamma and another, 2015 (2) RCR (Civil) 510*, where the deceased was aged 45 years, the Hon'ble Apex Court had applied the multiplier of 14, while observing as under :-

“17. Insofar as appropriate multiplier, the date of

birth of the deceased as per driving licence was 16.6.1961. On the date of accident i.e. 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs.16,82,310/- (Rs.1,20,165/- x 14).”

This Court in **Harjit Kaur's case** (supra) had applied multiplier of 14, where age of the deceased was taken as 44 years. In this regard, it was held as under :-

“12 PW3 Charan Dass stated that the deceased was working as Home Guard on daily wages basis and was getting Rs.386/- per day as wages and Rs.80/- as washing allowance per month. His monthly salary was Rs.12,046/-. However, during his cross-examination he stated that the services of the deceased could be terminated at any time as he was working on daily wage basis. Thus, considering the deceased as a casual labourer, the income of the deceased was rightly assessed as Rs.7500/- per month by learned Tribunal. The age of the deceased was taken as 44 years and the multiplier of '14' was rightly applied. There were four dependents on the

*income of the deceased namely his wife-Harjit Kaur, son-Tejinder Singh and daughters-Manpreet Kaur and Rajwinder Kaur and as per the law laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77**, 1/4th of the income was rightly deducted by learned Tribunal towards personal and living expenses of the deceased himself.”*

In view of the above decisions, the multiplier of 13 applied by the Tribunal cannot be said to be on higher side.

The argument of learned counsel for the appellant that the Tribunal had wrongly deducted 1/4th towards personal expenses of the deceased, instead 1/3rd of the salary should have been deducted on this account, carries no weight. The deceased was survived by a widow, three minor children and his mother. In other words, five family members of the deceased are claimants. In such circumstances, 1/3rd deduction for personal expenses of the deceased is not to be allowed. Rather, the Tribunal has rightly deducted 1/4th of his income as personal expenses.

This Court in **Harjit Kaur's case** (supra), where dependents on the income of the deceased were four in number, had allowed 1/4th deduction towards his personal expenses. Even otherwise, a person supporting family consisting of six members (including himself) cannot be expected to be spending 1/3rd of his salary for his personal expenses. Thus, no fault can be pointed out in the impugned award of the Tribunal regarding deduction of 1/4th of his salary towards his personal expenses.

The Insurance Company has challenged the grant of rate of interest of 7.5% and has prayed the same should be reduced to 6%. The Tribunal has granted the rate of interest, keeping in view the bank rates prevalent at the time of the award. Even as on date, 7.5% rate of interest cannot be held to be excessive.

Keeping in view, the above said discussion, the appeal is dismissed. No case has been made out by the Insurance Company for reduction of the compensation amount.

(AVNEESH JHINGAN)
JUDGE

11.08.2017

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Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes