

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

FAO No. 6747 of 2011

DATE OF DECISION : 21.11.2017

Smt. Bimla and others

.... APPELLANTS

Versus

Rajesh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present :     Mr. Yashveer Kharb, Advocate, for  
                   Mr. Ajay Ghanghas, Advocate,  
                   for the appellants.

Mr. Subhash Goyal, Advocate,  
for respondent No.5 – Insurance Company.

\* \* \*

**AVNEESH JHINGAN, J.** ( Oral )

The present appeal involves the issue of determining the loss of dependency in case of a self employed businessman, especially when the income tax returns had been produced before the Tribunal.

The factual matrix necessary for adjudication of the present appeal are that Satyanarayan Gupta, aged 53 years, lost his life in a motor vehicular accident on 19.11.2008. His motor cycle bearing registration No. HR 06R-4430 was hit by a rashly and negligently driven Canter bearing registration No. HR 65-0921 (for short, 'the offending vehicle').

A claim petition under 166 of the Motor Vehicles Act, 1988 (for

short, 'the Act') was filed by the legal heirs of the deceased.

The Motor Accident Claims Tribunal, Panipat (for short, 'the Tribunal') vide award dated 11.08.2011 awarded a sum of ₹ 4,75,000/- along with interest at the rate of 6% per annum. The said awarded amount includes ₹ 35,000/- under the conventional heads.

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

The facts in the present case have not been disputed by either of the parties, i.e. involvement, rash and negligent driving of the offending vehicle, age of the deceased, multiplier applied and deductions made for self expenses of the deceased.

The only issue agitated is that the Tribunal while calculating the loss of dependency took monthly income of the deceased as ₹ 5,000/-, considering his status slightly better than a daily wager. The point in conflict is that once the income tax returns of the deceased for the assessment years 2006-07 to 2009-10 were produced before the Tribunal as Ex.P4 to Ex.P7 and there was no rebuttal to the said returns, the same were to be taken into consideration while assessing the income of the deceased.

There cannot be any quarrel to the proposition that the income tax return, especially when accompanied with the computation sheet, is the safest yardstick to determine the income of the deceased.

In the present case, it is evident from the income tax returns and the computation sheets for the assessment years 2006-07 to 2009-10 that the business income of the deceased was showing marginal increase every year.

As per the income tax returns for these four years, the following was the annual business income of the deceased :-

| Assessment year | Annual income (in ₹) |
|-----------------|----------------------|
| 2006-07         | 1,38,295.00          |
| 2007-08         | 1,14,221.00          |
| 2008-09         | 93,551.00            |
| 2009-10         | 1,63,082.00          |

There could have been a dispute that the income tax return for the assessment year 2009-10 was filed after the death of Satyanarayan and hence it should not have been taken into consideration. In the present case, it is not a case where the last return filed has shown exorbitant high income. The increase is gradual every year. In such circumstances, there is no harm in having a look on the last return also. As per the last return, after deducting the income tax paid, the monthly income, if rounded off, would come to ₹ 13,000/-. The loss of dependency is re-calculated by taking monthly income of the deceased as ₹ 13,000/-.

The Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others**, [Special Leave Petition (Civil) No. 25590 of 2014], decided on 31.10.2017, in the concluding para has held as under :-

*“61. In view of the aforesaid analysis, we proceed to record our conclusions :-*

*(i) to (iii) x x x*

*(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) to (vii) x x x*

*(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.”*

As per the above decision, where the deceased was self-employed and was aged between 50 to 60 years, 10% future prospects should be added to his established income. It has further been held that an amount of ₹ 70,000/- is to be awarded under the conventional heads, i.e. ₹ 15,000/- for loss of estate, ₹ 40,000/- for loss of consortium and ₹ 15,000/- for funeral expenses.

Hence, as per the decision of the Hon'ble Apex Court in **Pranay Sethi's case** (supra), the loss of dependency is re-calculated by taking the monthly income of the deceased as ₹ 13,000/- and by adding 10% as future prospects. While deducting 1/3<sup>rd</sup> towards self expenses of the deceased and by applying the multiplier of 11, loss of dependency is re-

calculated as under :

|                                                                  |                |
|------------------------------------------------------------------|----------------|
| Annual income 13,000 x 12                                        | ₹ 1,56,000.00  |
| Add 10% future prospects                                         | ₹ 15,600.00    |
| Total income after adding future prospects                       | ₹ 1,71,600.00  |
| Less 1/3 <sup>rd</sup> deduction for self expenses               | ₹ 57,200.00    |
| Dependency after deducting self expenses                         | ₹ 1,14,400.00  |
| Loss of dependency by applying multiplier of 11<br>1,14,400 x 11 | ₹ 12,58,400.00 |

Further, keeping in view the decision of the Hon'ble Apex Court in **Pranay Sethi's case** (supra), the amount of ₹ 35,000/- awarded under the conventional heads is enhanced to ₹ 70,000/- (i.e. ₹ 15,000/- for loss of estate, ₹ 40,000/- for loss of consortium and ₹ 15,000/- for funeral expenses).

In view of the above, the award dated 11.08.2011 is modified to the extent that the compensation of ₹ 4,75,500/- awarded by the Tribunal is enhanced to ₹ 13,28,400/-.

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

The appeal is partly allowed in the aforesaid terms.

**November 21, 2017**  
ndj

**( AVNEESH JHINGAN )**  
**JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

Yes