

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

FAO No. 333 of 2012
DATE OF DECISION : 12.12.2017

Ranga Swami and others

.... APPELLANTS

Versus

Mohinder Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Amandeep Kaur, Advocate, for
Mr. Ashwani Arora, Advocate,
for the appellants.

Mr. Sanjeev Goyal, Advocate,
for respondent No.3 – Insurance Company.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 31.10.2011 passed by the Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal').

In an accident, that occurred on 31.08.2010, Kokilama alias Kokalima lost her life. The accident involved a rashly and negligently driven bus bearing registration No. CH-04-D-0129 (for short, 'the offending vehicle'). Kokilama alias Kokalima was going on foot. She was struck by the offending vehicle and her head was crushed by the front wheel of the offending vehicle. FIR No. 170 dated 31.08.2010 was registered at Police Station Sector 26, Chandigarh.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased.

In the claim petition, it was claimed that the deceased was a house-wife. The Tribunal, considering her notional earning as ₹ 3,000/- per month, awarded a sum of ₹ 2,61,500/- along with interest at the rate of 7.5% per annum. The amount awarded included a sum of ₹ 2,000/- for funeral expenses; ₹ 5,000/- for loss of consortium and ₹ 2,500/- for loss of estate.

Aggrieved of the said award, the legal heirs of the deceased have filed this appeal for enhancement of compensation.

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

Learned counsel for the appellants has argued that the Tribunal erred in assessing the monthly notional earning of the deceased as ₹ 3,000/-. She further argued that as per the ration card (Ex.P2), produced by the appellants, the deceased was 51 years of age. Hence, multiplier of '7' has wrongly been applied. It is further argued that the amounts awarded under the conventional heads are also on the lower side.

On the other hand, learned counsel for respondent No.3 – Insurance Company has argued that the income of the deceased has rightly been assessed by the Tribunal. The earning of the deceased was not established by the claimants. He contends that as per the Post Mortem Report (Ex.P1), age of the deceased was 64 years. Hence, the multiplier of '7' has rightly been applied. He resisted enhancement of compensation under the conventional heads.

The contentions raised by learned counsel for the appellants deserve acceptance. The deceased was admittedly a house wife and her contribution cannot be under estimated. The Hon'ble Apex Court in

Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar

and others, 2015 (4) SCC 237, has held as under:

"Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

In the above decision, it has been held that contribution of a housewife to the family and her matrimonial duties cannot be underestimated. It has been held that it is very difficult to compute her contribution in monetary terms and she does not work by clock. It is her sincerity towards family, which keeps her going on.

Keeping in view the facts of the present case and age of the deceased, her notional income is taken as ₹ 5,000/- per month.

The contention raised by learned counsel for the appellants with regard to age of the deceased deserves acceptance. According to the ration card (Ex.P2), produced on record, age of the deceased at the time of the accident was 51 years. Even in the claim petition, it was stated that she

was 53 years of age. The reliance cannot be placed solely on the Post Mortem Report (Ex.P1), as generally in the Post Mortem Report, age of the deceased is mentioned in same as disclosed at the time of admission of the patient in the Hospital.

Hence, keeping in view the decision of the Hon'ble Apex Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121, considering the age of the deceased between 51 to 55 years, for calculating the loss of dependency, multiplier of '11' should have been applied.

The contention of learned counsel for the appellants with regard to awarding of compensation under the conventional heads also deserves acceptance, in view of the latest decision of 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**. As per the said decision, a sum of ₹ 70,000/- is to be awarded under the conventional heads, ₹ 15,000/- for loss of estate; ₹ 40,000/- for loss of consortium and ₹ 15,000/- for funeral expenses.

In view of the above, the compensation to be awarded to be appellants is re-calculated as under :-

Annual earning of the deceased	
5,000 x 12 = ₹ 60,000/-	
Compensation to be awarded by applying multiplier of '11'	60,000 x 11 = ₹ 6,60,000/-
Loss of estate	₹ 15,000/-
Loss of consortium	₹ 40,000/-
Funeral expenses	₹ 15,000/-
Total	₹ 7,30,000/-

Consequently, the award dated 31.10.2011 is modified to the extent that the compensation of ₹ 2,61,500/- awarded by the Tribunal is enhanced to ₹ 7,30,000/-.

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.

December 12, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes