Sr. No.103

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

**FAO No. 5195 of 2012
Date of decision: 04.12.2017**

Smt. Sunita Rani and others
............Appellants

versus

Aman Bir Singh and others
..........Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Ms. Seema Pasricha, Advocate
for the appellants.

Ms. Madhu Sharma, Advocate
for the Insurance Company.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the claimants against the award passed by the Motor Accidents Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') on the ground of insufficiency of compensation awarded to them.

The brief facts of this case are that on 11.01.2010; at about 4:45 PM; Surender Kumar was going to Rail Coach Factory, Hussainpur; on Scooter bearing Registration No. PB-09-3548. When he reached near Gate No. 1, motorcycle bearing Registration No. PB-08BH-2012, being driven by respondent No. 1, in rash and negligent manner came from the side of Sultanpur and hit the scooter. SurenderKumar fell on the road alongwith his scooter. This accident was witnessed by Rasal Singh and Ashok Kumar besides the wife of Surender Kumar. After the accident, Surender Kumar was shifted to Rail Coach Factory Hospital. From there he was referred to Bansal Hospital, Jallandhar where he was admitted. However, he succumbed to the injuries. Regarding this accident an FIR was also registered against respondent No. 1. Therefore, on account of death of Surender Kumar the claim petition in the present appeal was filed by widow, 3 minor children and the mother of the deceased, Surender Kumar.

It was pleaded in the claim petition that the deceased was of the age of 46 years. He was employed at Rail Coach Factory at Hussainpur (Kapurthala) as Technician-Grade-I. It was further claimed that he was getting basic salary of ₹ 14,420/- alongwith incentives and allowances. It was claimed that his last drawn salary was ₹42,325/- for the month of December, 2009. Accordingly, the compensation of ₹1 crore was claimed by the claimants.

Respondent No. 1 filed written statement challenging the jurisdiction of the Tribunal. It was further claimed that no such accident; as claimed by the claimants; had happened due to rash and negligent driving of respondent No. 1. It was further claimed that the accident, in fact, happened due to the rash and negligent driving of the deceased himself. Therefore, dismissal of the claim petition was prayed for.

Respondent No. 3, Insurance Company filed separate written statement and alleged collusion between the claimants and respondents No. 1 and 2. It was claimed by the Insurance Company that no accident involving motor cycle bearing Registration No. PB-08BH-2012 has taken place. It was further claimed that the driver of the offending motor cycle was not holding any valid and effective driving license at the time of accident. Still further it was claimed that respondent No. 2 was not the owner of the motor cycle on the date of accident. Negligence of the deceased was also pleaded. It was further denied that any witness had seen the accident in question. Still further the jurisdiction of the Tribunal to entertain the claim petition at Jind was questioned on the ground that the accident had taken place at Kapurthala.

Parties led their respective evidence.

After hearing the learned counsel for the parties, the Tribunal assessed the income of the deceased to be ₹14,420/- per month; as was shown in the salary certificate Ex:P2. The deceased was held to be the age of 48 years at the time of accident as per the matriculation certificate Ex:P11. The Tribunal applied the deduction of $1/3^{rd}$ for personal expenses of the deceased. Hence, the total loss of dependency was calculated by the Tribunal at ₹1,15,360/- per annum. While calculating the total loss of dependency, although the Tribunal had held the multiplier of 13 to be applicable in the case, as per the age of the deceased, however, by mistake multiplier of 11 was applied for making actual calculation. Accordingly, an amount of ₹12,68,960/- was held to be the total loss of dependency to the claimants; on account of death of the deceased. Still further another amount of ₹10,000/- was awarded to the claimants towards loss of love and affection. Hence the claimants were held entitled to compensation of ₹12,78,960/-; which was rounded off by the Tribunal to ₹12,79,000/-.

However, dealing with the question of liability to make the payment, the Tribunal held that since the driver of the offending vehicle was minor, therefore, the Insurance Company would not be liable to make the payment in the case, since the vehicle was being driven in violation of the provisions of the Act. Accordingly, the Tribunal held that although the Insurance Company would pay the amount to the claimants in the first instance, however, the Insurance Company would be entitled to recover the same from the owner, i.e. respondent No.2 and the father of respondent No.1, jointly and severally.

No appeal has been filed by the Insurance Company or by the owner or driver in the present case. It is only the claimants who have come in the appeal against the award of the Tribunal claiming enhancement of the compensation. In the present appeal also the owner of the offending vehicle, the respondent No. 2, has chosen not to appear despite service. Accordingly, he was proceeded ex parte. Even respondent No. 1 had to be served through publication. However, nobody has appeared on his behalf. However, the Insurance Company is duly represented. This is how the present appeal is before this Court.

While arguing the case, learned counsel for the appellants has submitted that the Tribunal has gone wrong in law in assessing the income only at the level of basic pay of the deceased. It is her submission that the allowances which were being received by the deceased also have to be counted towards the income while assessing the income of the deceased. It is submitted by the learned counsel that except the income tax deducted from the salary the entire salary has to be taken into consideration for the purpose of assessing the income of the deceased.

The next contention of learned counsel for the appellants is that since, admittedly, number of dependents is 5, therefore, the deduction in this case has to be applied at the rate of $1/4^{th}$ of the income and not $1/3^{rd}$ as has been done by the Tribunal. Learned counsel has further submitted that the mistake committed by the Tribunal; while actually calculating the total loss of dependency; by multiplying the annual loss of dependency with a wrong multiplier; also deserves to be corrected. Still further it is submitted by learned counsel that admittedly, the deceased was of the age of 48 years, therefore, as per the judgment of the Hon'ble Supreme Court rendered in the case of ***National Insurance Company Limited vs. Pranay Sethi and others 2017 ACJ 2700*** the claimants would be entitled to the benefit of increase of compensation at the rate of 30% of the income on account of future prospects of the deceased. Still further; it is submitted by learned counsel for the appellants that no compensation has been granted to the complainant on account of loss of consortium, loss of estate and funeral expenses. Accordingly, her submission is that the claimants are entitled to compensation on these heads also as per the judgment rendered in the case of ***National Insurance Company Limited (supra).***

On the other hand, learned counsel for the respondent-Insurance Company has pointed out that the salary certificate Ex:P2 wrongly depicts the total salary of the deceased. In fact, even as per this certificate the total of the salary of the deceased comes to ₹28,116/-, as admitted by PW-1, Junior Clerk of the Rail Coach Factory; who was examined by the claimants to prove the salary certificate. Her further submission is that the applicable income tax also has to be deducted from the salary for the purpose of calculation of the dependency; to assess the compensation to be awarded to the claimants. Learned counsel for the respondents have also opposed any enhancement on account of future prospects. It is her submission that the compensation has been rightly awarded by the Tribunal and needs no enhancement.

Having heard learned counsel for the parties and perusing the record, this Court is of the considered opinion that the arguments raised by learned counsel for the appellants deserves to be sustained. Even as per the learned counsel for the respondent, the salary certificate Ex:P2 shows the total salary of the deceased to be ₹28,116/- per month including the allowances. However, this certificate also shows the applicable tax qua the salary of the deceased. The tax deductible on the salary has been reflected in the certificate as ₹1,570/- per month only. Therefore, the income of the deceased is to be taken as; the gross salary minus the income tax. Resultantly, the income of the deceased is proved on record to be ₹26,546/- per month. This amount has to be taken into consideration for the purpose of calculation of compensation in the present case. The Tribunal has not given any reason for restricting the income of the deceased at ₹14,420/- only, i.e. the basic salary only for the purpose of calculation of compensation payable to the claimants. Otherwise also, it is well settled law that allowances attached with the salary has to be counted towards income for the purpose of assessing the income of the deceased in a claim petition. Resultantly, the income of the deceased is assessed at ₹26,546/- per month.

Learned counsel for the appellants is also right in making submission that the deduction of only 1/4th has to be made from the income of the deceased for personal expenses. The judgment of the Hon'ble Supreme Court rendered in case of ***Sarla Verma vs. Delhi Transport Corporation and another, 2009 ACJ-1298,*** as has been upheld by the constitution bench judgment in the case of ***National Insurance Company Limited(supra),*** has laid down the standardized deductions as per the number of the dependents. As per the judgment of the ***Sarla Verma case (supra);*** the deduction applicable in the present case is 1/4th. Accordingly, the deduction applicable in the present case is held to be 1/4th. Resultantly, the loss of dependency to the claimants in the present case is assessed at

₹19,909.5/- per month [26,546 - 6636.5(26546 x ¼)]. The multiplier of 13 was held to be applicable in the present case by the Tribunal also. However, it appears that by inadvertent mistake the Tribunal multiplied the annual loss of dependency only by 11. Therefore, it is held that, as was held by the Tribunal also, that the applicable multiplier in the case would be 13.

The argument of the learned counsel for the appellants qua entitlement of the claimants to the future prospects also finds support from the judgment of the Hon'ble Supreme Court rendered in the case of ***National Insurance Co. Ltd.(supra)***. As per the judgment of the Hon'ble Supreme Court the claimants in the present case are held entitled to 30% increase in income of the deceased for the purpose of calculation of amount of dependency. Accordingly, by granting the benefit of 30% increase in come, the monthly loss of dependency of the claimant is assessed at ₹19,909.5 +5972.85 (19,909 x 30%) = ₹25,882.35/-. Accordingly, the annual loss of dependency to the claimant comes to ₹25,882.35 X 12= ₹3,10,588.2/- . Applying the applicable multiplier of 13 the total loss of dependency to the claimants comes to ₹3,10,588.2 x 13 = ₹40,37,646.6/-. By rounding off, the claimants are held entitled to compensation on account of loss of dependency to an amount of ₹40,38,000/-.

Still further; the Tribunal has not awarded any amount to the claimants on account of loss of consortium, loss of estate and the funeral expenses. In view of the latest judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd.(suupra);*** the claimants are entitled to an amount of ₹40,000/- on account of loss of consortium, an amount of ₹15,000/- on account of loss of estate and still further an amount of ₹15,000/- on account of funeral expenses. The claimants are awarded the compensation on these three heads also. Accordingly, the total compensation of ₹41,18,000/- is awarded to the claimants in the present case as per the details given below:-

Sr.No.	***Heads***	***Amount(₹)***
1	**Loss of dependency**	**40,38000**
2	**Loss of Consortium**	**40,000/-**
3	**Loss of Estate**	**15,000/-**
4	**Funeral Expenses**	**15,000/-**
5	**Loss of Love and Affection**	**10,000/-**
	Total	**41,18,000/-**

The interest on the amount of compensation is retained at the same rate as was awarded by the Tribunal.

Since there is no challenge to the award qua the recovery rights of the Insurance Company, therefore, the direction given by the Tribunal regarding recovery rights is also retained as such.

No other argument was raised by learned counsel for the parties.

In view of the above, the appeal filed by the claimants is allowed in the above said terms. The award of the Tribunal is modified to the above extent.

4th December, 2017 **[Rajbir Sehrawat]**
Shivani Kaushik **Judge**

Whether speaking/reasoned : Yes

Whether reportable : Yes