IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 130 of 2014 (O&M)

DATE OF DECISION : 30.10.2017

Seema Devi and others

.... APPELLANTS

Versus

Virender Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Kunal Dawar, Advocate,
for the appellants.

Mr. Rajat Mor, Advocate, for
Mr. T.K. Joshi, Advocater,
for respondent No.3-Insurance Company.

* * *

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 15.10.2013 passed by the Motor Accident Claims Tribunal, Palwal (for short `the Tribunal').

In an accident on 13.02.2012, Kumarpal lost his life. He was a driving the motor cycle (it has been wrongly mentioned in the award that Kumarpal was the pillion rider and Kumarpal was driving the motor cycle). The motor cycle was hit by a Pick-up bearing registration No. HR-74-8728.

The legal heirs of deceased Kumarpal filed a claim petition under Section 166 of the Motor Vehicles Act, 1988.

After considering the evidence and hearing learned counsel for the parties, the Tribunal awarded compensation of ₹ 8,74,000/- along with interest at the rate of 9% per annum.

The present appeal has been filed by the claimants for enhancement of compensation.

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

Learned counsel for the appellants argued that while calculating loss of dependency, the Tribunal has not considered the take home salary of the deceased. He further contends that the deceased was a Government employee, but nothing has been awarded on account of future prospects. He submits that the amount awarded under the conventional heads is very meager.

Learned counsel for respondent No.3 – Insurance Company resisted any enhancement. However, he could not raise any serious objection to the deciding of the case in accordance with law as per the decisions of the Hon'ble Apex Court.

The issues raised by learned counsel for the appellants are supported by the decision of the Hon'ble Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121***.

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:*

Monthly Income Deductions	*₹26,950-00*
Provident Fund	*₹8,000-00*
House Rent	₹ 525-00
G.I.S.	*₹120-00*
IncomeTax	*₹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.

Without expressing any opinion on the merits of the case, the matter is remitted back to the Tribunal to be decided afresh in accordance with law.

The parties are directed to appear before the Tribunal on December 22, 2017.

Appeal is disposed of accordingly.

October 30, 2017 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No