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

FAO NO.5756 of 2013
Date of Decision : 12.12.2017

MANMATI AND ANOTHER

....APPELLANTS

VERSUS

BACCHA YADAV AND OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. P.C. Gupta, Advocate
for the appellants.

Mr. Punit Jain, Advocate,
for respondent No.3-Insurance Company

Respondent No. 2 ex-parte vide order dated 26.02.2016.

B.S.WALIA, JUDGE (ORAL)

1. As per office report dated 07.02.2017, learned counsel for the appellants has not taken any step for effecting service on respondent No.1. Learned counsel for the appellant states that respondent No.1 is not necessary party, therefore, his service be dispensed with. Ordered accordingly.

2. Prayer is for enhancement of compensation of ₹7,01,000/- awarded on the death of 58 years old Shri Ramdev Shastri in an accident on 19.09.2011. Learned Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as the 'Tribunal') on the basis of ITR reflecting annual income of ₹1,05,000/- took the monthly income of the deceased as ₹9000/- and after deducting $1/3^{rd}$ of the monthly income of the deceased on account of personal expenses assessed dependency at ₹6000/- per month.

Accordingly, dependency was worked out as ₹6000 x 12 x 8 = ₹5,76,000/-, and in addition thereto, ₹1,00,000/- was awarded on account of loss of consortium and ₹ 25,000/- towards funeral expenses. In all a sum of ₹7,01,000/- was awarded along with interest of 7.5% per annum from the date of institution of the claim petition till date of payment.

3. Learned counsel for the appellants contends that in the proceedings before the learned Lok Adalat a statement had been made that if a sum of ₹1,00,000/- was paid over and above the amount already awarded by the Tribunal, the same would be accepted by the appellant in full and final settlement of the claim in the present appeal and the appellant's would also give up their claim qua interest on the enhanced amount. However, the aforesaid proposal did not mature, as a result of which the matter has come up before the Court.

4. Learned counsel for the appellants contends that the learned Tribunal erred in applying multiplier of 8 instead of 9 whereas in view of the decision of the Hon'ble Supreme Court in '***Sarla Verma and others* vs. *Delhi Transport Corporation and Anr*. *2009(3) RCR (C) 77*,** and the deceased admittedly being of 58 years of age, multiplier of 9 was to be applied. Relevant extract of the decision in Sarla Verma's case (supra) is reproduced as under :-

> ***21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years,***

> ***M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.***

Learned counsel for the respondents fairly did not dispute applicability of multiplier of '9'.

5. Learned counsel for the appellants by relying on the decision of the Hon'ble Supreme Court in SLP (Civil) No. 25590 of 2014, National Insurance Company Limited vs. Pranay Sethi and Ors further contended that the learned Tribunal further erred in not awarding any amount on account of future prospects. Relevant extract of the aforementioned decision is reproduced as under:-

> ***"61(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."***

In the light of the aforementioned position, learned counsel for the appellants contends that compensation payable to the appellants is liable to be enhanced. Learned counsel for the respondents did not controverts the plea for grant of future prospects by addition of 10 % of the established income of the deceased.

6. Learned counsel for the respondents while not disputing the plea for enhancement on the aforementioned grounds contended that compensation of ₹1,00,000/- awarded on account of loss of consortium has to be reduced to ₹40000/- while ₹25,000/- granted for funeral expenses has to be reduced to ₹15,000/- in view of decision of the Hon'ble Supreme Court

in Pranay Sethi (Supra). Relevant extract of the aforementioned decision is reproduced as under:-

> ***54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and 40 traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.***

7. Learned counsel contends that in view of the decision of the Hon'ble Supreme Court in ***Ranjana Prakash and others vs. Divisional***

Manager and another 2011 (14) SCC 639, compensation awarded on account of loss of consortium, funeral expenses was required to be modified besides awarding compensation towards loss of Estate. Relevant extract of the aforementioned decision is reproduced as under:-

> ***"7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.***
>
> ***8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the***

> ***compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.***

8. Learned counsel for the appellants has not disputed the plea of learned counsel for the Insurance Company for reduction of the compensation payable on account of loss of consortium from ₹1,00,000/- to ₹40000/- and ₹15,000/- towards funeral expenses instead of ₹25,000/- besides award of Rs.15,000/- towards loss of Estate.

9. I have considered the submissions made by learned counsel for the parties in the light of the position noted above and am of the view that the compensation payable to the appellants is liable to be enhanced from ₹7,01,000/- to ₹7,82,000/-as per details given as under:-

Sr. No.	***Heads***	***Compensation awarded by Tribunal***	***Compensation awarded by this Court***
1	Income assessed	₹9000/-	No change
2	Future prospect	Nil	10% i.e ₹9000 x10% = 900
3	Dependency worked out	₹9000 - 1/3(on account of personal expenses) =Rs. 6000 x 12 x 8 = ₹5,76,000/-	₹9900 - 1/3 = Rs. 6600 x 12 x 9 = ₹7,12,800/-
4	Loss of consortium	₹1,00,000/-	₹40,000/-
5	Loss of estate	Nil	15,000/-
6	Funeral expenses	₹25,000/-	₹15,000/-
	Total	₹7,01,000/-	₹7,82,000/-

10. Accordingly, appeal is allowed in the aforementioned terms and the Award of the Tribunal is modified to the extent that the appellants are held entitled to total compensation of ₹7,82,000/- along with interest @ 7.5 % per annum as against ₹7,01,000/- awarded by the Tribunal along

with interest @ 7.5% per annum from the date of filing of the claim petition till realization, less amount, if any, already paid earlier.

11. Appeal allowed in aforementioned terms.

B.S.WALIA
JUDGE

December 12, 2017
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No