IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5213 of 2014 (O&M)

Date of Decision: 6.11.2017

Davinder Kaur and others

.......Appellants

Versus

Amarnath and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Kanika Kaur, Advocate for
Mr. Gaurav Chopra, Advocate
for the appellants.

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

AVNEESH JHINGAN, J.

The present appeal has been filed by the legal heirs of Manjit Singh @ Mangu, for enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Panchkula (for short 'the Tribunal') vide award dated 15.1.2013.

The enhancement is prayed for on two counts: firstly that the deceased was earning Rs.7000/- per month from the shop and the Tribunal has wrongly taken the monthly earning as Rs.4000/-. Secondly, that the amounts awarded under the conventional heads of Rs.30,000/- are on the lower side.

So far as the second contention of learned counsel for the appellant is concerned same is now authoritatively decided by Hon'ble the Apex Court in ***National Insurance Company Limited Versus Pranay***

<u>Sethi and others</u> Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017. The relevant part whereof reads as under:

> "61. In view of the aforesaid analysis, we proceed to record our conclusions:-
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> (i) The two-Judge Bench in *Santosh Devi* should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma,* a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
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> (ii) As Rajesh has not taken note of the decision in *Reshma Kumari*, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
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> (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
>
> (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) For determination of the multiplicand, the deduction

for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.

(vi)The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(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, the claimants are entitled to an amount of Rs.70,000/- under the conventional heads i.e. Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate and Rs.40,000/- for loss of consortium. The enhancement of the conventional heads needs no discussion on the facts of the present case and the same are enhanced according to the above referred decision of Hon'ble the Apex Court.

Before dealing with the salary part it would be appropriate to take note of bare facts of the case.

On 21.2.2010 Manjit Singh was travelling in a Maxi cab. The said cab was banged into by an Eicher Canter bearing registration No.HR-37-B-9679 as it was coming from the opposite direction. Manjit Singh aged 39 years, lost his life on the spot. FIR was registered with the police.

The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The Tribunal awarded a sum of Rs. 4,68,000/- for loss of dependency. The amount awarded by the Tribunal was along with interest at the rate of 6% per annum.

Learned counsel for the appellants argued that the deceased was working with Chhabra Iron Store and getting the salary of Rs.7000/- per month. The claimants had examined Sat Pal- PW2, who was proprietor of the said concern. He also produced the cash book in order to establish that the salary of Rs.7000/- per month was being paid to the deceased. Learned counsel further contended that having established his monthly salary the Tribunal ought to have awarded loss of dependency by taking into consideration his earning as Rs.7000/- per month.

Learned counsel for the Insurance Company argued that the claimants failed to prove the income, merely producing cash book and examining the Proprietor was not enough.

There is no dispute raised by the parties with regard to the involvement of the vehicle or rash and negligent driving of the vehicle.

The contention raised by learned counsel for the appellants has substance. The claim made by the claimants that the deceased was earning salary of Rs.7000/- per month itself shows that the deceased belonged to a lower middle income group. Such like people generally tend to get employment at various shops and establishments as they are not otherwise skilled. These small establishments cannot be put to a standard of proof which would be required for limited companies. The Proprietor appearing as PW2 stated that the deceased was working in his concern and was getting Rs.7000/- per month. He brought his cash book. The said cash book would make the basis of accounts books to be prepared. The respondents were not able to falsify or point out any defect in the statement given by PW2. The Tribunal has rejected the deposition of PW.2 on the ground that he was a person who was willing to oblige the appellants. Though this cannot be ruled out, but since the salary claimed was not exorbitant, so prima-facie it does not appear to be a case where PW2 appeared just to oblige the claimants.

The other aspect considered by the Tribunal was that no appointment letter was produced. It is a common fact that the salesmen or workers appointed by the Proprietorship concern are not issued appointment letters.

It has further been stated in the award that no evidence was produced by PW2 of his being proprietor of the concern. It would be sufficient to say that no doubt was raised by the respondents about his proprietorship. No such issue was raised during his deposition, so that such a piece of evidence could have come on record.

The Tribunal outrightly brushed aside the cash book, as not being reliable piece of evidence. The cash book formed the foundation of the account books to be prepared. It has not neither been even observed by the Tribunal nor averred by the respondents that the cash book was not worth reliance as it was prepared in one sitting for this case.

In such circumstance, the loss of dependency should have been calculated taking the monthly income of the deceased as Rs.7000/-. There is no dispute with regard to deduction made for self expenses and the multiplier applied, loss of dependency is recalculated by taking the monthly income as Rs.7000/- per month.

7000 x 12 = 84000/-

¼ deduction for self expenses =21,000/-

84000 - 21000 =63000/-

Applying multiplier of 13: 63000 x 13 = 8,19,000/-

The award dated 15.1.2013 is modified to the extent that the amount awarded of Rs.4,98,000/- is enhanced to Rs. 8,89,000/-.

The claimants shall be entitled to enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the above said terms.

(AVNEESH JHINGAN)
JUDGE

6.11.2017
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Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No