220

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6087 of 2014
Date of Decision : 20.12.2017

KIRPA DEVI AND OTHERS **....APPELLANTS**

VERSUS

BIRSAIN AND OTHERS **....RESPONDENTS**

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

Present: Mr. J.P. Sharma, Advocate for the appellants.
Mr. Vinod Chaudhri, Advocate for respondent No.3-Insurance Company.

B.S. WALIA, JUDGE (ORAL)

[1] Learned counsel for the appellants contends that in view of the decision of the Hon'ble Supreme Court in '***Sarla Verma*** *versus* ***Delhi Transport Corporation***', *(2009) 6 SCC 121,* multiplier of '14' and not '11' is applicable as the deceased was 45 years of age. Relevant extract of the decision of the Hon'ble Supreme Court in '***Sarla Verma's*** *case (supra)* is reproduced as under :-

> ***"42. 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[3], Trilok Chandra[4] and Charlie[9]), 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."***

[2] Learned counsel for respondent-Insurance Company fairly conceded application of multiplier of 14 but contended that in view of paragraph No.61(viii) of the decision of the Hon'ble Supreme Court in

'***National Insurance Company Limited*** *versus* ***Pranay Sethi and others'***, *SLP (Civil) 25590 of 2014*, *decided on 31.10.2017,* compensation of Rs.1,00,000/- awarded on account of loss of consortium was required to be reduced to Rs.40,000/- while Rs.20,000/- awarded towards funereal expenses was liable to be reduced to Rs.15,000/-. Learned counsel for the appellant on the other hand contended that the aforesaid decision also provided for award of Rs.15,000/- towards of loss of estate. Relevant extract of the aforesaid decision is reproduced hereunder :-

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

[3] Learned counsel for the respondent Insurance Company further contended that where the number of dependents were 4-6, personal expenses were to be deducted @ 1/4th and the decision in '***New India Assurance Company Ltd*** *vs* ***Gopali and others*** *2012 (3) RCR (Civil) 818 SC* had impliedly been overruled by the Constitution Bench Decision in ***Pranay Sethi's*** case *(supra)* by affirming the view in '***Sarla Verma and others*** *vs* ***Delhi Transport Corporation and another',*** *2009(6) SCC 121.* Relevant extract of the decision in ***Pranay Sethi's*** case *(supra) is as under:*

> ***61(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.***

Likewise, relevant extract of the decision in ***Sarla Verma vs. DTC, (2009) 6 SCC 121*** is as under :

> ***30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra[4], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.***

[4] I have considered the submissions made by learned counsel for the parties and am of the view that in the light of the position as noted above, the appellants would be entitled to award of compensation by applying multiplier of 14, excluding 1/4th income of the deceased towards his personal expenses and grant of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of Estate and Rs.15,000/- towards funereal expenses plus interest as per details given hereunder :

Sr. No.	Heads	Amount assessed / awarded by Tribunal	Amount assessed / awarded by this Court
(i)	Income	Rs.4800/- P.M.	No change
(ii)	Income after deduction towards personal expenses of deceased :	1/10th 4800-480=4320/-	1/4th Rs. 4800-1200= Rs.3600/-
(iii)	Dependancy on application of multiplier :	Rs. 4320 x 12 x 11= Rs.5,70,240/-	Rs. 3600 x 12 x 14= Rs.6,04,800/-
(iv)	Loss of Estate	Nil	Rs.15,000/-
(v)	Loss of Consortium	Rs.1,00,000/-	Rs.40,000/-
(vi)	Funeral Expenses	Rs.20,000/-	Rs.15,000/-
	Total	Rs. 6,90,240/-	Rs. 6,74,800/-

[5] Although in the manner indicated above, the compensation payable stands increased on applying multiplier of 14 instead of multiplier of 11 yet in net result, the total compensation payable stands decreased from Rs.6,90,240/- to Rs.6,74,800/- along with interest @ 9% per annum with effect from the date of the claim petition till date of payment. However, no appeal has been filed

by the Insurance Company. Accordingly, in the light of the decision of the Hon'ble Supreme Court in '***Ranjana Prakash and others* vs. *Divisional Manager and another'*** *2011 ACJ 2418*, relevant extract of which 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."*

the appeal for enhancement is dismissed.

(B.S. WALIA)
JUDGE

December 20, 2017
rajneesh

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

Rajneesh Sharma
2018.01.19 12:39
I attest to the accuracy and
integrity of this document