IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5884-2015 (O&M)
Date of decision: 10.11.2017

Annu Bala and others .... Appellants

Versus

Kala Singh and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Rajbir Singh, Advocate
for the appellants.

Mr.Vinod Gupta, Advocate
for respondent No.3.

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Avneesh Jhingan, J.

In the present appeal, the appellants raise a grievance that the Tribunal while awarding the compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') had deducted 10% income tax on the total compensation assessed.

The legal position with regard to the salary to be taken in consideration has been settled by the Hon'ble Apex Court in ***Manasvi Jain vs. Delhi Transport Corporation, 2014(3) SCC 22*** and it has been held 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."

As per the above decision, in order to assess the compensation, the monthly salary is to be taken into consideration after deducting the income tax payable.

The facts have not been disputed by either of the parties and same are not being reproduced.

The bare facts which are necessary for adjudication are that Rakesh Kumar, aged 39 years, was Clerk in Punjab State Power Corporation Limited. He lost his life in a motor vehicular accident that occurred on 10.04.2014. In the claim petition filed under the Act, the Tribunal awarded a sum of Rs.58,12,000/-along with interest @ 7.5% per annum. The amount awarded included loss of dependency of Rs.55,86,570/- and Rs.2,25,000/- under the conventional heads.

Learned counsel for the appellants has argued that the loss of dependency was rightly assessed by the Tribunal at Rs.62,07,300/- but while awarding the said amount 10% income tax was deducted on the entire amount. The plea is that income tax if at all was to be deducted from the monthly salary. He further contended that annual salary of the deceased was Rs.4,13,820/-. He further contended that as per Ex.A3, there were deductions available to him under Section 80C of the Income Tax Act, 1961 (for short, 'the Act, 1961').

Learned counsel for the Insurance Company defended the award but could not raise any serious objection with regard to the method of deduction of income tax. He further raised a plea that the excess amount has been awarded to the claimants under the conventional heads which should be restricted as per the latest decision of the Hon'ble Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors. in SLP (Civil) No.25590 of 2014 decided on 31.10.2017,*** the relevant part whereof reads 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 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."

As per the above decision, the amount of Rs.70,000/-is to be awarded under the conventional heads i.e. Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium.

The loss of dependency has to be considered keeping in view that during the relevant year, the nil slab under the Income Tax Act was Rs.2,50,000/- and there are deductions available under Section 80C of the Act, 1961, which the deceased had availed.

Learned counsel for both the parties agreed that Rs.12,000/- be deducted for the income tax, the recalculation be made as under by adopting the figures as taken by the Tribunal, they are not in dispute except the income tax to be deducted :-

Annual dependency as assessed by the Tribunal after making deduction of 1/3rd for self expenses and adding 50% future prospects	Rs.4,13,820/-
Less income tax	Rs.4,01,820/-
Applying multiplier of 15	Rs.4,01,820X15=60,27,300/-
Under the conventional heads	Rs.70,000/-
Total	Rs.60,97,300/-

The award dated 24.04.2015 is modified to the extent that the amount awarded by the Tribunal of Rs.58,12,000/- is enhanced to Rs.60,97,300/-.

The claimants shall be entitled to enhanced amount along with interest as awarded by the Tribunal from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

10.11.2017
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1.Whether the order is speaking/reasoned: Yes/No
2.Whether the order is reportable : Yes/No