

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

**FAO No.5040 of 2002 (O&M)
Date of Decision :19.01.2018**

Bimlesh Devi & others

....APPELLANTS

VERSUS

Duliya @ Partap Singh & ors.

.....RESPONDENTS

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

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

Mr. Rohit Goswami, Advocate for
Mr. D.P.Gupta, Advocate
for respondent No.3-Insurance Company.

B.S. WALIA, JUDGE (ORAL)

CM No.19949 of 2002

1. For the reasons as are mentioned in the application, delay of 22 days in refiling the appeal is condoned.

CM stands disposed of.

FAO No.5040 of 2002

2. Challenge is to award dated 08.04.2002 passed by the learned Motor Accidents Claims Tribunal, Panipat (hereinafter referred to as “the Tribunal”). The Tribunal by taking into account that deceased was 24 years old, having income of

₹2400/- per month, worked out dependency of ₹1600/- per month by applying deduction of $\frac{1}{3}$ rd of the income as his personal expenses applied multiplier of 18, awarded ₹10,000/- towards funeral expenses, loss of consortium as well as loss of estate, accordingly, awarded total compensation of ₹3,55,600/-.

3. Challenge to the award is on the ground that deduction towards personal expenses of the deceased was to be made @ $\frac{1}{5}$ th of the income of the deceased instead of $\frac{1}{3}$ rd since the deceased had 8 dependants. Besides, compensation towards Future Prospects as also appropriate amount towards loss of consortium, loss of estate and funeral expenses was not awarded. Learned counsel for the respondent-Insurance Company has not disputed the aforementioned claim.

4. I have considered the submissions of learned counsel for the parties.

5. As regards the plea that deduction towards personal expenses had been wrongly made @ $\frac{1}{3}$ rd of the income of the deceased as against the requirement to make a deduction @ $\frac{1}{5}$ th on account of the deceased having left behind eight dependants, it needs noticing that the father of the deceased would not be entitled to claim not being a dependant. As per paragraph No. 61(v) of the decision of the Hon'ble Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others-2017(4) RCR (Civil) 1009** upholding view in '**Sarla Verma vs Delhi Transport Corporation**', 2009 ACJ 1298, where number of dependents of the deceased is more than 6, personal expenses of the deceased are to be deducted @ $\frac{1}{5}$ th of the income of the deceased. Relevant extract of the decision in Pranav Sethi's case (supra) is reproduced as under :

“39. Before we proceed to analyse the principle for addition of future prospects, we think it seems to clear the maze which is vividly

reflectible from Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, Sarla Verma lays down:-

“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 Chandra⁴, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this 37 (2003) 3 SLR (R) 601 31 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.”

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

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 herein before.”

Accordingly, deduction of personal expenses of the deceased shall be made @ 1/5th of the income of the deceased while working out the compensation payable.

6. As regards the plea for grant of Future Prospects, it needs noticing that as per paragraph No.61 (iv) of the decision in **Pranay Sethis’s** case (supra), in case the deceased was less than 40 years self-employed, addition of 40% of the established income is to be made to the income of the deceased towards future

prospects, minus the tax component. Paragraph No.61 (iv) of the decision in **Pranay Sethi's** case (supra) 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.”

Since the deceased was admittedly 24 years of age and was self-employed as a Driver, an addition of 40% of the established income is to be made to the income of the deceased towards future prospects, minus the tax component for working out the compensation payable.

7. As regards the prayer for grant of appropriate compensation towards loss of consortium, loss of estate as well as towards funeral expenses, it needs noticing that as per paragraph No.61 (viii) of the decision in **Pranay Sethi's** case (supra) the deceased's wife is entitled to compensation of ₹40,000/- on account of loss of consortium while ₹15,000/- is payable to claimants on account of loss of estate and ₹15,000/- towards funeral expenses. Paragraph No.61 (viii) of the decision in **Pranay Sethi's** case (supra) is reproduced as under:-

“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.”

In the light of the position as noted above, the deceased's wife will be

entitled to ₹40,000/- on account of loss of consortium while the appellants would be entitled to a sum of ₹15,000/- on account of loss of estate and ₹15,000/- towards funeral expenses as against ₹10,000/- awarded in lump sum by the learned Tribunal.

9. Accordingly, compensation payable on enhancement works out as under :-

Sr. No.	Head	Amount assessed by Tribunal.	Amount assessed by this Court.
1	Income	₹2400/-	₹2400/-
2	Future prospects.	NIL	@ 40%=₹960/-
3	Total income assessed	₹2400/-	₹3360/-
4	Deduction towards personal expenses of deceased.	₹800/- (1/3 rd)	₹672/- (1/5th) per month
5	Dependency arrived at	₹1600/- per month	₹2688/- per month
6	Multiplier applied	18	18
7	Compensation awarded	₹1600 x 18 x 12 = ₹3,45,600/-	₹2688 x 18 x 12 = ₹5,80,608/-
8.	(i) Loss of consortium (ii) Funeral expenses (iii) Loss of Estate	Consolidated ₹10,000/- against serial Nos.8, 9 and 10.	₹40,000/- ₹ 15,000/- ₹15,000/-
	Total	₹3,55,600/-	₹6,50,608/-

10. Resultantly, as against the compensation of ₹3,55,600/- awarded to the appellants by the Tribunal, the claimant-appellants except the father of the deceased would be entitled to ₹6,50,608/- along with interest @ 9 % per annum as awarded by the Tribunal with effect from the date of the claim petition till realisation of the payment, less payment, if any, already made in the manner indicated by the Tribunal with proportionate adjustment being made of the compensation payable amongst other claimants on account of exclusion of the father of the deceased qua his claim for award of compensation.

10. Accordingly, appeal is allowed by modifying the award dated 08.04.2002

passed by the learned MACT, Panipat to the extent noted above.

(B.S. WALIA)
JUDGE

January 19, 2018

ps

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