IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3024 of 1999 (O&M)
Date of Decision : 21.02.2018

Bimla and another .....Appellants

Versus

General Manager, Haryana Roadways and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashish Gupta, Advocate for the appellants.

Mr. Ajit Bhardwaj, AAG, Haryana, for the respondents

Surinder Gupta, J.

This is appeal by claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Rewari (later referred to as 'the Tribunal') for death of Pawan Kumar (later referred to as 'the deceased'), in a motor vehicle accident on 27.07.1995 with Haryana Roadways Bus bearing registration no. HR-39-916 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal is enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. Learned counsel for appellants has argued that the deceased was getting the salary of ₹8819.81 ps. He was employed with Maruti Udyog Limited. PW-1 S.P. Sharma, has produced on record salary certificate of the deceased as Ex. P-3 and the Tribunal has taken his salary as ₹3166/- after excluding all the allowances and production incentive, which are part of the salary and could not be excluded while computing amount of compensation. He has further argued that the Tribunal has also not allowed any addition in

income of the deceased towards future prospects and the multiplier was also not applied as per observations of Hon'ble Apex Court in case of ***Sarla Verma and others* vs. *Delhi Transport Corporation and anr*. (2009)6 SCC 121**, which was further affirmed by Hon'ble Constitution Bench in case of ***National Insurance Company Limited* vs. *Pranay Sethi and others*, 2017 (4) R.C.R. (Civil) 1009**. The Tribunal bifurcated the multiplier as per share of Bimla, who has contracted *kareva* marriage in the family of deceased and for the minor daughter, which is not permissible.

4. Learned AAG, Haryana appearing for respondents has argued that the Tribunal has rightly taken income of the deceased as ₹3166/- as allowances like uniform maintenance, transport subsidy etc. were personal allowance of the deceased and cannot be treated as part of the salary. Production incentive, which find mentioned in salary certificate is more than the salary of the deceased and PW-1 S.P. Sharma has categorically stated that this is linked with production, as such, the Tribunal has rightly ignored this allowance. On the point of future prospects, learned AAG has not conceded the issue but at the same time could not distinguish the judgment of Hon'ble Apex Court in case of ***Pranay Sethi (supra)*** on this issue. Regarding calculation of compensation by bifurcating the share of Bimla Devi, he has argued that she has contracted second marriage after death of her husband, as such, her share has rightly be reduced by the Tribunal while allowing the compensation.

5. First point in issue in this case is about income of the deceased, which as per salary certificate (Ex. P-3) placed and proved on file by PW-1 S.P. Sharma was as follows:-

Basic Pay	₹2226.00
Dearness Allowance	₹720.00
H.R.A.	₹667.80

Fixed DA	₹220.00
C.C.A.	₹100.00
Uniform Maint. Reimb.	₹100.00
Transport subsidy	₹50.00
Children Edu. Allowance	₹100.00
B-Shift Allowance	₹140.00
On A/c Prodn. Incentive	₹4496.81
Total	₹8819.81

6. So far as uniforms maintenance and transport subsidy is concerned, these allowances were personal for the deceased and cannot form part of the salary. After reducing this amount salary of the deceased works out to be ₹4173/-. Now the question is about production incentive of ₹4496.81 ps. as mentioned in salary certificate. Firstly, it is not clear that this production incentive was confined to the month of July, 1995 or for a longer period. Salary certificate (Ex. P-3) gives no details about the same. PW-1 S.P. Sharma has stated that the production incentive varies from month to month. He again appeared as PW-14 and stated that if the employee remains on leave or does not do work or complete the target, then he is not entitled to production incentive. Keeping in view his statement, I am of the opinion that entire amount of ₹4496.81 ps. added in the salary of deceased towards production incentive cannot be taken as part of salary of one month, when there is no evidence on record to show that in the previous months, deceased was also getting incentive to this extent. However, this fact can be looked into that the deceased was getting some amount towards production incentive and that is to be treated as part of his salary. Even if 20% of this amount of production incentive as mentioned in the salary certificate is taken as part of salary, it works out to be around ₹900/- approximately per month. Splitting of above amount is only a guess work, which has to be resorted keeping in view lack of evidence on record.

7. Keeping in view above fact, income of the deceased is taken in lump sum as ₹5000/- per month. The deceased was 25 years of age and as per law laid down in case of ***Pranay Sethi (supra)***, claimants are entitled to addition of 40% in income of the deceased towards future prospects and the multiplier applicable in this case is 18. The Tribunal has split the multiplier while calculating the amount of compensation with the observation in para 33 of the award as follows:-

> *"33. Regarding the compensation to be paid to Bimla. It has not been disputed by her that she had married Krishan brother of the deceased about two months ago. Her statement was recorded on 7.9.1998. Learned counsel for the petitioners has placed reliance on the observations made in case **Khairullah and another versus Anita and others, 1994 ACJ, 1017** and submitted that simply because Bimla had remarried brother of the deceased would not debar her to claim compensation. The facts of the case would show that on the date when widow had given evidence and when award was passed, she did not remarry. In these circumstances, it was observed that even if there is remarriage it cannot be taken as a ground to refuse compensation to her. She is only a widow and no person of equal status of the deceased would come forward to marry a widow. While refuting the stand of the petitioners, learned counsel representing the respondents has placed reliance on the observations made in case **Colonel K.S.Dhaliwal and another versus Jagdeep Riar and others, 1986-1 PLR 121** wherein it*

was held that it has come in evidence that widow had remarried after about 27 months of the death of her husband Dr. Manjit Singh. The date of remarriage being 26th October, 1980. The claim in respect of Mrs. Jagdeep Riar has thus to be confined to this period of 27 months only. Further strength was sought from the observations made in case ***Anju Mukhi and another versus Satish Kumar and others, 1998 ACJ, 400*** *wherein it was observed that widow after remarriage lost her entitlement to claim compensation a dependent of her first husband and for that reason she was allowed ₹6000/- as loss of dependency for the period of over six months for which she remained the widow. I am bound by the view taken by our own Hon'ble High Court. Therefore, Bimla is entitled to claim compensation from the date of death of her husband upto the time of her remarriage i.e. upto 7.7.1998 from 28.07.1995, the date of death of her husband. The total period of dependency comes to for 36 months. The monthly income determined for working out compensation comes to ₹2111/- As the deceased has left behind his daughter Komal, she is entitled to ½ share of the compensation amount out of the amount of ₹2111/-. For the purpose of her entitlement, multiplier of 16 has to be applied. Therefore, her share of compensation comes to ₹2,02,560/- whereas share of her mother for 36 months at the rate of ₹1055/- per month* *comes to ₹37980/-. Therefore, they are entitled to receive this compensation amount from the respondents, who shall be jointly and severally liable to pay the same."*

8. Though, widow after marriage looses her entitlement to claim compensation as dependant on her husband, who died in an accident but in this case the deceased had also left behind his minor daughter who for all intents and purposes is entitled to claim compensation. As per ratio of judgment in case of ***Sarla Verma (supra)*** and ***Pranay Sethi (Supra)***, it is only the share of appellant no. 1-Bimla, who has contracted *kareva* marriage after three years of death of her husband, which can be looked into while apportioning the amount of compensation. The deceased was 25 years of age and the multiplier which is to be applied while computing the compensation is 18.

9. In view of above, the compensation to which claimants are entitled is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Pawan Kumar
(ii)	Age of the deceased	25 years
(iii)	Monthly income of the deceased	₹5000
(iv)	40% of (iii) above added towards future prospects	(₹5000- ₹2000)= ₹7000/- per month
(v)	1/3rd of (iv) above deducted towards personal expenses	(₹7000- ₹2333) = ₹4667 per month
(vi)	Compensation calculated after applying the multiplier of 18 in view of age of mother of the deceased	(₹4667X12X18) = ₹1008072
(vii)	Loss of estate	₹10000
(viii)	Loss of consortium	₹30000
(ix)	Funeral expenses	₹10000
Total		**₹1058072 (rounded off to ₹1058000)**

10. As a sequel of my discussion above, the instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Pawan Kumar is enhanced from ₹2,40,540/- to ₹10,58,000/-. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of the claim petition till actual realization. Respondent no. 1-Owner of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. Claimants will share the amount of enhanced compensation as follows:-

(i)	Appellant no. 1 (wife)	:	20%
(ii)	Appellant no. 2	:	80%

February 21, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*