IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 670 of 1999 (O&M)
Date of Decision : 06.04.2018

Smt. Madhur Lata and others ....Appellants

Versus

Sh. Dinesh and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sidharth Grover, Advocate
for Mr. S.S. Narula, Advocate
for the appellants.

Ms. Priya Deep, Advocate
for Mr. Ashwani Talwar, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Sonipat (later referred to as 'the Tribunal') for death of Anil Shankar Aggarwal (later referred to as 'the deceased'), in a motor vehicle accident on 22.01.1997 with Jeep bearing registration no. HR-10B-2843 (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. The Tribunal vide award dated 13.10.1998 awarded compensation of ₹2,40,000/- to claimants-appellants, which was computed as follows:-

(i)	Name of the deceased	Anil Shankar Aggarwal
(ii)	Age of the deceased	55 years
(iii)	Monthly income of the deceased as assessed by the Tribunal	₹6000

(iv)	1/3rd of (iii) above deducted towards personal expenses	(₹6000- ₹2000) = ₹4000 per month
(v)	Compensation calculated after applying the multiplier of 5	(₹4000X12X5)= ₹240000
Total		**₹240000**

4. Learned counsel for appellants has argued that the deceased was employed as Manager in Goel Spinning and Weaving Mills, where he had been getting ₹8500/- per month as salary. The Tribunal has taken note of this evidence and observed that total salary of the deceased was ₹8500/- per month but the carry home salary was ₹6000/- per month as he was getting ₹1000/- as House Rent Allowance and ₹1000/- as Conveyance Allowance. House Rent Allowance is part of the salary and could not be excluded from monthly salary of the deceased. Age of the deceased was 50 years. It was also so recorded in the postmortem report. The Tribunal without any basis has taken his age as 55 years and applied multiplier of 5. As per law settled by Hon'ble Apex Court in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** which was further approved by Constitutional Bench of Hon'ble Apex Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009,*** multiplier attracted in this case as per age of the deceased is 13. Claimants are also entitled to 25% addition in income of the deceased towards future prospects.

5. Learned counsel for respondent no. 3-Insurance Company has argued that carry home salary of the deceased was ₹6000/- per month as ₹1000/- each was being paid to him towards House Rent Allowance and Conveyance Allowance and deduction of ₹425/- was made towards his provident fund. The Tribunal has rightly taken income of the deceased as

₹6000/- per month. As there was no evidence regarding age of the deceased, the Tribunal has taken the same as 55 years, which claimants cannot challenge. However, he has not disputed the applicability of multiplier as per age of the deceased in view of law settled by Hon'ble Apex Court in case of ***Sarla Verma (supra).***

6. The Tribunal has taken note of the proved income of the deceased in para 25 of the Award, which reads as follows:-

> *"25. PW-5 Dalbir Singh Clerk in Goel Spinning and Weaving Mills deposed that Anil Shankar Aggarwal was drawing ₹6500/- per month as his salary, ₹1000/- H.R.A. and ₹1000/- as conveyance allowance per month. He was income tax payee. He used to deduct a sum of ₹250/- out of his salary in the month of December, 1996 as income tax. In January, 1997, Anil Shankar was paid a salary of ₹3825/- after deductions of ₹425/- towards Provident Fund. The total salary of 17 days in January was ₹4250/-. Ex. P-5 is the salary certificate. In other words, total salary of Anil Shankar Aggarwal was ₹8500/- and carry home salary was ₹6000/-. Dependency of claimants was ₹4000/- per month. ....."*

7. From the above, it is clear that deceased was getting salary ₹8500/- per month. Even if conveyance allowance be taken as personal allowance, which may not be added towards carry home salary, the proved income of the deceased was ₹7500/- per month. The amount being deducted towards Provident Fund could not be deducted from total income of the deceased. In view of evidence on record, I take income of the deceased as ₹7500/- per month. Age of the deceased as per postmortem report was 50 years. It is correct that claimants could produce record about age of the deceased but in the absence of any such record, the Tribunal could rely on

age of the deceased as mentioned in postmortem report and there was no basis for taking his age as 55 years. As per law settled by Hon'ble Apex Court in case of ***Pranay Sethi (supra),*** claimants are entitled to 25% addition in income of the deceased towards future prospects. The multiplier applicable while computing amount of compensation for loss of dependency is 13 as per law settled by Hon'ble Apex Court in case of ***Sarla Verma (supra).***

8. The accident in this case had taken place in January, 1997. In the year 1996-97, a sum of ₹40,000/- out of total income was exempted from any tax and upto ₹60,000/-, 20% tax was payable and from ₹60,000/- to ₹1,00,000/-, 30% tax was payable. Annual income of the deceased works out to be ₹90,000/-. Income tax on this amount works out to be around ₹10,000/- as employees were entitled to deduction of the amount deposited towards provident fund and some other deductions as well. In view of above facts, annual income of the deceased is taken as ₹80,000/-. Keeping in view the fact that accident had taken place in the year 1997 claimants are also allowed compensation of ₹20,000/- towards loss of consortium, ₹5000/- towards funeral expenses and ₹10,000/- for loss of estate. The deceased has left behind 7 legal heirs out of whom one Shalini Aggarwal, his daughter, was married as such number of dependants on the deceased is taken as 6 and 1/4th deduction out of his total income is to be made towards his personal expenses.

9. In view of my above discussion compensation, to which claimants-appellants are entitled, is computed as follows:-

(i)	Annual income of the deceased after deduction of ₹10,000/- towards taxes	₹80000
(ii)	25% of (i) above added towards future prospects	(₹80000+₹20000)= ₹100000 per annum

(iii)	1/4th of (ii) above deducted towards personal expenses	(₹100000-₹25000) = ₹75000 per annum
(iv)	Compensation calculated after applying the multiplier of 13 in view of age of the deceased	(₹75000X13) = ₹975000
(v)	Compensation towards loss of consortium	₹20000
(vi)	Compensation towards loss of estate	₹10000
(vii)	Compensation towards funeral expenses	₹5000
	Total	**₹1010000**

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 Anil Shankar Aggarwal is enhanced from ₹2,40,000/- to ₹10,10,000/-. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of instant appeal till actual realization. Respondent no. 3-Insurance Company being insurer 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 enhanced amount of compensation as follows:-

(i) Appellant no. 1 (wife) : 40%

(ii) Appellants no. 2 to 7 (children): 10% each

11. In the event of demise of any of the claimants before or after disposal of this appeal, compensation of his/her share shall be paid to surviving claimants.

April 06, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

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