IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-1753-2001 (O&M)
Date of Decision: 04.07.2018

Pushpa & others ... Appellants

Versus

Gurdial Singh & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Ms. Ekta Thakur, Advocate for the appellants.

Mr. Rajesh K. Sharma, Advocate for respondent No.3.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

This is an appeal preferred by the claimants/appellants seeking enhancement of compensation.

2. Briefly noticed, the claimants preferred a claim petition under Section 166 of the Motor Vehicles Act on account of death of Yash Pal Sharma in a motor vehicle accident. Claimants were the widow and two minor children of deceased Yash Pal Sharma.

3. Claimants had asserted that Yash Pal Sharma was serving as a Postman in Post Office Sector-18, Chandigarh and on 15.10.1998 deceased was going from Post Office Sector-18, Chandigarh on a bicycle to his village Raipur Khurd. At about 4:45 P.M., when he reached between villages Hallomajra and Raipur Khurd, a truck bearing registration No.PB-12-C-1333 driven by respondent No.1/Gurdial Singh (driver) in a rash and negligent manner came from behind and struck against the bicycle of Yash Pal Sharma and on account of which he fell down and received grievous

injuries. Yash Pal Sharma was removed to PGI, Chandigarh but he succumbed to the injuries suffered on the following date i.e. 16.10.1998. FIR No.117, dated 15.10.1998, under Sections 279/337 IPC was registered with Police Station Sector-31, Chandigarh. Deceased was stated to be 37 years of age on the date of accident. Deceased serving as a Postman was claimed to be in a permanent job and was drawing salary of Rs.4500/- and in addition thereto, earning Rs. 1500/- per month from tuition work. He was stated to be the sole bread earner of the family. Offending truck was stated to be owned by respondent No.2 i.e. M/s Mulkh Raj Harjinder Kumar and was insured with respondent No.3/the New India Insurance Company.

4. It may be noticed that the claim petition was primarily contested by the Insurance Company.

5. On the pleadings on record, the following issues were framed by the Tribunal:

> *(1) Whether Yashpaul died in a motor vehicle accident, which took place on 15.10.1998 near village Raippur Khurd due to rash and negligent driving of truck No.PB-12-C-1333 by respondent No.1? OPP*
>
> *(2) Whether claimants are entitled to compensation? If so, how much and from whom? OPP*
>
> *(3) Whether respondent No.1 was not holding a valid and legal driving license at the time of accident? If, so, its effect on present petition? OPR3.*
>
> *(4) Relief."*

6. Since the only question involved in the present appeal is with regard to quantum of compensation, as such, only the findings returned by the Tribunal as regards issue No.2 are being adverted.

7. The Tribunal has held that the deceased was drawing a salary of

Rs.4407/- P.M. A cut of 1/3rd was imposed and the monthly dependency of the claimants after deducting 1/3rd from the salary of the deceased was arrived at Rs.3038/-. Age of the deceased was accepted as 37 year and multiplier of 13 was adopted. Annual dependency was arrived at Rs.36,456/- by adopting the multiplier of 13, the amount of compensation, which the claimants were held entitled was determined as Rs.4,73,928/-. That apart, claimants were allowed Rs.2000/- towards funeral expenses. Total amount of compensation determined was Rs.4,75,928/-. It was also directed that the amount of compensation would be paid to the claimants along with interest @ 9% per annum from the date of filing of the claim application i.e. 06.11.1998 till the date of release of payment.

8. Counsel for the appellants and for the contesting respondent/ Insurance Company have been heard at length.

9. It would be apposite to notice that respondent No..3/Insurance Company had also assailed the award of Tribunal dated 16.03.2001 by filing FAO-2321-2001 and it has been conceded by learned counsel representing the Insurance Company that such appeal has since been dismissed by this Court.

10. In the considered view of this Court, the compensation awarded to the claimants is on the lower side and not in conformity with the dictum laid down by the Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & others,2017 (4) RCR (Civil) 1009.** The conclusions drawn by the Supreme Court and which would be construed as binding directives while determining compensation in motor accident claim cases are contained in para 61 of the judgment and are reproduced herein

as under:

> *"61. In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
>
> *(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
>
> *(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.*
>
> *(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.

(vii) The age of the deceased should be the basis for applying the multiplier.

(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."

11. On a previous date of hearing i.e. on 07.05.2018, counsel had been directed to submit calculations as per conclusions drawn in **Pranay Sethi's case (supra).**

12. Mr. Rajeev K. Sharma, Advocate representing the Insurance Company has very fairly furnished during the course of hearing today, a tabulation reflecting the break up/compensation that had been awarded by the Tribunal and what ought to have been awarded in terms of judgment rendered in **Pranay Sethi's case (supra).**

13. The tabulation as furnished by learned counsel representing the Insurance Company is reproduced hereunder:

<u>CALCULATIONS OF COMPENSATION</u>

Sr. No.	Particulars	Awarded by the Tribunal	Compensation as per **National Insurance Company Limited Vs. Pranay Sethi & others,2017 (4) RCR (Civil) 1009**
1.	Occupation	Postman	
2.	Age	37 years	37 years
3.	Income Assessed	Rs.4407/- P.M.	Rs.4407/- P.M.
4.	Deductions	1/3rd	1/3rd
5.	Dependency	2/3rd	2/3rd
6.	Multiplier	13	15
7.	Future	NIL	50%

	prospects		
8.	Loss of dependency	4407x12x2/3x13= 4,73,928/-	(4407+50%)x2/3x12x15 =7,93,320/-
9.	Funeral expenses	Rs.2000/-	Rs.15,000/-
10.	Loss of Estate	NIL	Rs.15,000/-
11.	Loss of consortium	NIL	Rs.40,000/-
12.	Total	Rs.4,75,928/-	Rs.8,63,320/-

14. Counsel representing the appellants does not dispute the contents thereof and makes a statement that the revised calculations of compensation is in terms of settled law. Even this Court has examined the revised calculations/tabulations furnished by learned counsel for Insurance Company and is satisfied that the enhanced compensation amount indicated therein i.e. Rs.8,63,320/- is in terms of the parameters laid down by the Hon'ble Supreme Court is **Pranay Sethi's case (supra)**.

15. Consequently, the appeal succeeds and is allowed enhancing the compensation from Rs.4,75,928/- to Rs.8,63,320/-. It is, however, directed that such enhanced amount would carry interest @ 6% from the date of filing of the claim petition and till the final release of the amount. It is further directed that the enhanced compensation amount (along with interest) would be apportioned in the following manner:

(i) 60% of the amount would be invested in fixed deposit accounts in some nationalized bank at the maximum rate of interest in equal shares in the names of two minor children i.e. appellants No.2 and 3. They would entitled to release of such amount only upon attaining the age of majority.

(ii) Balance amount be released in favour of the widow i.e. appellant No.1 as she is to look after and maintain the children as also to meet the household expenses.

16. Appeal is allowed in the aforesaid terms.

04.07.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes

ii) Whether reportable? Yes