

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

FAO No.2371 of 2001

Date of Decision : 18.07.2018.

Gurmail Kaur and others

... Appellants

versus

Jawahar Lal Singla and others

.... Respondents

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

Present: Mr. Rishav Jain, Advocate
for the appellants.

Mr. Radhey Shyam Sharma, Advocate
for respondent No.3.

B.S.WALIA, J. (Oral)

1. Appeal has been filed by the appellants-claimants, widow, daughter and two sons of deceased Babu Singh, who died in a motor vehicular accident on 17.10.1998. Deceased was 57 years of age and was employed in the Central State Library, Patiala. His income was assessed at ₹5592/- per month, however, for the purpose of award of compensation, the same was taken at ₹5,000/- per month. After making deduction of 1/3rd of his income towards personal expenses and applying multiplier of '7', dependency was arrived at ₹2,85,600/-. By adding ₹14,600/- towards funeral expenses, total sum of ₹3,00,000/- was awarded as compensation.

2. Learned counsel for the appellants has raised fivefold submissions to challenge the award to seek enhancement of the compensation awarded viz. that on account the deceased being 57 years of age multiplier of '9' not '7' was applicable. No amount was awarded on

account of loss of consortium and loss of estate. Besides the amount awarded on account of funeral expenses was also slightly lesser than what is payable. Thirdly, deduction in case of 4 dependants was to be at the rate of $\frac{1}{4}^{\text{th}}$ of the income of the deceased, whereas the same had been made at the rate of $\frac{1}{3}^{\text{rd}}$ of the income of the deceased. Fourthly, although the income of the deceased had been assessed at ₹5592/- per month yet for working out compensation payable, the same had been taken at the rate of ₹5,000/- per month. Lastly, no amount had been awarded towards future prospects.

3. Per contra, learned counsel for the respondent contended that appellant Nos.2 to 4 i.e. daughter and sons of the deceased were not entitled to compensation, as they were major, married and were working. He has further urged that the interest awarded at the rate of 10% per annum is on the higher side. No other point has been urged by either of the parties.

4. I have considered the submissions of learned counsel for the parties and am of the view that the claim petition is liable to be accepted for the reasons as are mentioned hereinunder.

5. Admittedly, the deceased was 57 years of age and was working on a permanent job in the Central State Library, Patiala against salary of ₹5592/- per month i.e. income which was assessed by the Tribunal. Multiplier of '7' was applied, whereas as per paragraph No.42 of the decision of Hon'ble the Supreme Court in Sarla Verma vs. Delhi Transport Corporation and another 2009(6) SCC 121, where the age of deceased is 57 years, multiplier of '9' is to be applied. Relevant extract of Sarla Verma's case (supra) is reproduced as under:-

“We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M- 16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

Accordingly, it is held that multiplier of ‘9’ would be applicable and not ‘7’.

6. Secondly, the deceased left behind four dependants. In terms of paragraph No.30 of Sarla Verma’s case (supra), deduction was to be made at the rate of $\frac{1}{4}^{\text{th}}$ of the income of the deceased and not at the rate of $\frac{1}{3}^{\text{rd}}$ as held by the Tribunal. Relevant extract of Sarla Verma’s case (supra) is reproduced as under:-

“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(2003) 3 SLR (R) 601 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 ($\frac{1}{3}^{\text{rd}}$) where the number of dependent family members is 2 to 3, one-fourth ($\frac{1}{4}^{\text{th}}$) where the number of dependent family members is 4 to 6, and one-fifth ($\frac{1}{5}^{\text{th}}$) where the number of dependent family members exceeds six.

Since, in this case, admittedly the deceased left behind four dependents, therefore, deduction is to be made at the rate of 1/4th and not 1/3rd.

7. Thirdly, the deceased was earning ₹5592/- per month i.e. the amount which was so assessed by the Tribunal. Merely because the deceased was 57 years of age and was to retire after three years, would not entitle reduction of the income assessed. Accordingly, the income of the deceased as was assessed by the Tribunal i.e. ₹5592/- is to be taken into account for working out the compensation and the same is rounded off to ₹5600/- per month.

8. Fourthly, the appellants-claimants were awarded only ₹14,400/- towards funeral expenses and no amount was awarded on account of loss of consortium and loss of estate, whereas as per paragraph No.61 (viii) of the decision of Hon'ble Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 2009, a sum of ₹15,000/- each is to be awarded on account of loss of estate and funeral expenses, while a sum of ₹40,000/- is to be awarded on account of loss of consortium. Relevant extract of the decision of Hon'ble Supreme Court 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 ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

Accordingly, the appellants would be entitled to ₹15,000/- on account of loss of estate and Rs.600/- more towards funeral expenses in addition to ₹14,400/- already awarded by the Tribunal, while appellant No.1/widow would be entitled to ₹40,000/- on account of loss of consortium.

9. Lastly, no amount was awarded towards future prospects. As per paragraph No.61 (iii) of Pranay Sethi's case (supra), an addition of 15% of the actual salary to the income of deceased less tax is to be made while computing future prospects where the deceased had a permanent job and was between the age of 50 to 60 years. Relevant extract of Pranay Sethi's case (supra) is reproduced as under:-

(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.

10. Since the deceased had a permanent job, was 57 years of age, therefore, an addition of 15% of the established income of the deceased less tax component is to be made while computing future prospects. As regard the plea of the respondents that appellant Nos.2 to 4 were major, married and were working, therefore, were not dependent upon the deceased and consequently not entitled to award of compensation, it needs mention that there is no finding in the award as to what work was being

done and how much amount was being earned. The deceased was working on Class-IV job and the age of the children has also not come on record. It has not come on record as to what job or work the appellant Nos.2 to 4 were doing and how much they were earning. Even if working they cannot be presumed to be working on highly paid job. In the circumstances, it cannot be said that the children of the deceased were not dependent on him. Reference in this context can be made to the decision of this Court in Gurdev Kaur and others vs. Jharmal Singh and another 2017 (3) PLR 8, in which, this Court while noticing that the children of the deceased were major and were earning ₹7,000/- to ₹8,000/- and ₹10,000/- to ₹12,000/- per month, held that even if a son is major and earning he does stop looking to his father for financial help and does not lose the status of legal representative about which there is a reference in Section 166 (1) (c) of the Motor Vehicles Act, 1988. In the aforementioned background, this Court held that major children of the deceased are entitled to maintain the claim petition on the death of their father. Paragraph No.12 of the decision of this Court in Gurdev Kaur's case (supra) is reproduced as under:-

“There is no rebuttal to the statement of appellant-claimant, Smt. Gurdev Kaur the widow of deceased Mam Raj that she and her two sons are living jointly. Meaning thereby both the sons were living jointly with their deceased father. No doubt, both of them are major and are doing the private job. One of them is getting the salary at the rate of Rs.7,000/- to Rs.8,000/- per month and the other is getting salary at the rate of Rs.10,000/- to Rs.12,000/- per month. So, it is not a case where the sons of the deceased were drawing big salaries and they were not in need of any contribution to the family of their father. It is an admitted fact that even if a son is major and is

earning, he does not stop looking to his father for financial help. The sons, even if they are major, do not lose the status of legal representative, about which there is a reference in Section 166 (1) (c) of the Motor Vehicles Act, 1988 (for brevity the ‘Act’). Therefore, even the major sons and daughters are entitled to maintain the claim petition on the death of their father.”

11. While following the aforementioned decision of this Court, a Coordinate Bench of this Court in ICICI Lombard General Insurance Company Limited vs. Shree Bhagwan and others 2017 (4) Law Herald 2872 held that even a major son and daughter are entitled to maintain the claim petition on the death of their father.

12. As regard payment of interest, learned counsel for the respondent urged for reduction of interest to 6%. Hon’ble the Supreme Court in Sube Singh and another vs. Shyam Singh (dead) and others, civil appeal No.7176 of 2015, decided on 09.02.2018, while taking into account that the accident pertained to 22.09.2009, enhanced the rate of interest from 6% to 9%. In the instant case, the accident had taken place in the year 1998 while the award was passed in the year 2001, therefore, the rate of interest is scaled down from 10% to 9%.

13. Accordingly, in the light of the position as noted above, compensation payable works out as under :-

Sr. No.	Heads	Amount assessed by the Tribunal.	Amount assessed by this Court.
1.	Income	Assessed ₹5592/- taken into account for award of compensation ₹5000/-	₹5592/- rounded off to ₹5600/-
2.	Future Prospectus	Nil	15% of ₹5600/-=₹840/-

3.	Total Monthly Income	₹5000/-	₹5600+840=6440/-
4.	Deduction (monthly of total income assessed towards personal expenses)	1/3 rd of ₹5000=1600 ₹5000-₹1600=₹3400	1/4 th of ₹6440/- =1610 ₹6440-₹1610=₹4830
5.	Multiplier	‘7’	‘9’
6.	Dependency	3400x12x7=₹2,85,600/-	4830x12x9=₹521640/-
7.	Loss of consortium	Nil	₹40,000/-
8.	Loss of Estate	Nil	₹15,000/-
9.	Funeral expenses	₹14,400/-	₹15000/-
	Total	₹3,00,000/-	₹5,91,640/-

14. Accordingly, in view of the position as noted above, as against the compensation of ₹3,00,000/- awarded to the appellants, the appellants are held entitled to award of compensation of ₹5,91,640/- along with interest @ 9% per annum w.e.f. the date of claim petition till the date of payment, less amount, if any already paid. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares as determined by the Tribunal after first making payment of ₹40,000/- towards loss of consortium to the widow of the deceased. The insurance company shall make payment of the amount towards future prospects after deducting tax liability, if any, in accordance with Pranay Sethi’s case (supra).

15. Accordingly, appeal is allowed and award is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

18.07.2018.
rajesh.k.khurana

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