IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 1044 of 2004 (O&M)

Date of Decision:19.01.2018

Kamla and others

.......Appellants

Versus

Dharambir and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr.Vivek Suri, Advocate
for the appellants.

Mr. Kuldeep Sheoran, Advocate
for respondent No.1.

Mr. Shubham Jain, Advocate
for respondent No.4.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 10.11.2003 passed by the Motor Accidents Claims Tribunal, Panipat (for short 'the Tribunal').

This was burnt case and has been reconstructed from the salvaged record and copies supplied by counsels subject to all just exceptions.

In a motor vehicular accident that occurred on 22.9.2002 Bishan Singh @ Bishan Ram, aged 53 years, lost his life. He was sitting on a bench in front of a tea vendor when a rashly and negligently Haryana Roadways Bus bearing registration No. HR-45-2689, struck with a Kikkar tree and then hit the deceased. He died on the spot. FIR No. 319 dated 22.09.2002 was registered at Police Station Model Town, Panipat.

A claim petition was filed by the widow and three children of the deceased under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal awarded a sum of Rs. 4,07,324/- alongwith interest at the rate of 9% per annum. The present appeal has been filed for enhancement of compensation.

For the last many dates, no one has put in appearance on behalf of the appellants. Since, the present proceedings are under welfare legislation, Mr. Vivek Suri, Advocate, was appointed as amicus-curiae to assist the Court.

The deceased was working as Technician Grade-II with HVPNL, Panipat. His salary certificate was exhibited as Ex.P1. As per the said certificate, he was drawing a monthly salary of Rs.8382/-. The said certificate was not disputed by the respondents. The Tribunal while awarding the compensation took the salary of deceased as Rs.6424.50, as there was deduction made for GPF, GIS and marriage advance. The said deduction could not have been made while calculating the compensation. The said view is supported by the decision of Hon'ble the Apex Court in ***Manasvi Jain Vs. Delhi Transport Corporation, 2014 (3) RCR (Civil) 313***, wherein it has been held as under:

> *"12. This Court in* ***Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378****, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium,repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.*
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> *13. In the present case, there is no dispute about of the salary of the deceased. As per salary certificate, his*

monthly income and deductions are as under:

Monthly Income Deductions	*Rs.26,950-00*
Provident Fund	8,000-00
House Rent	525-00
G.I.S.	120-00
Income Tax	2,500-00

So, from the above table, it is clear that except an amount of Rs.2,500/- towards Income Tax, rest of the amounts were voluntarily contributed by the deceased for the welfare of his family. Considering the decision of this Court in Shyamwati Sharma & Ors., (supra), in our opinion, except contribution towards Income Tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary. Hence, the take home salary of the deceased comes to Rs.24,450/- which can be rounded to Rs.25,000/-"

There is no dispute between the counsel that during the said year, the said amount never fell in taxable slab.

The age of the deceased was 53 years and the Tribunal erred in applying the multiplier of 8. In view of the law laid down by Hon'ble the Apex Court in ***Sarla Verma and others Vs. Delhi Transporation Corporation and another (2009)6 SCC 121***, multiplier of 11 should have been applied. The deceased was survived by four dependents, in view of the decision of Hon'ble the Apex Court in **Sarla Verma's case (supra)** , 1/4th deduction should have been made.

In view of decision of Hon'ble the Apex Court in ***National Insurance Company Limited Versus Pranay Sethi and others Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017***, as the deceased was having a permanent employment and was aged 53 years, 15% future prospects should be awarded. It has further been held by Hon'ble the Apex Court in **Pranay Sethi's case (supra)**, that Rs.70,000/- is to be awarded under conventional heads i.e. Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses respectively.

In view of the discussion made above, the compensation is recalculated as under:

Annual salary (8382 x 12)	Rs.1,00,584/-
15% future prospects	Rs.15,088/-
Total	Rs.1,15,672/-
1/4th deduction for self expenses	Rs.28,918/-.
Balance	Rs.86,754/-
Applying multiplier of 11	Rs.9,54,294/-
Conventional heads	Rs.70,000/-
Total	Rs.10,24,294/-

The award dated 10.11.2003 is modified to the extent that the amount awarded of Rs.4,07,324/- is enhanced to Rs.10,24,294/.

The claimants shall be entitled to enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the above said terms.

(AVNEESH JHINGAN)
JUDGE

19.01.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No