IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO No.2896 of 2010 (O&M)
Date of Decision: January 25, 2018.

Rekha Garg and others
..........APPELLANT(s).

VERSUS

Pepsu Road Transport Corp. and others
........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashish Yadav, Advocate
for the appellant (s).

Mr. Ankit Aggarwal, Advocate for
Mr. Anupam Singla, Advocate
for respondents No.1 and 2.

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SURINDER GUPTA, J.

Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the tribunal') vide award dated 07.01.2010 allowed compensation of ₹21,55,000/- for death of Naresh Kumar Garg, husband of appellant No.1 and father of appellants No.2 to 4, in a motor vehicle accident with PRTC Bus bearing registration No.PB-11Y-7645.

As the only issue involved in this appeal relates to quantum of compensation as awarded by Tribunal, detailed facts of the case are being skipped for the sake of brevity.

Compensation awarded by the tribunal was computed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Naresh Kumar Garg
(ii)	Age of the deceased	47 years
(iii)	Income of the deceased	₹247000 per annum

(iv)	Deduction towards personal expenses 1/3	₹247000-82000=₹165000 per annum.
(v)	Multiplier applied 13	₹165000X13 = ₹2145000/-
(vi)	Funeral expenses and last rites	₹10000/-
Total		₹21,55,000/-

Learned counsel for the appellants-claimants has argued that the deceased was a Government Contractor. In order to prove his income, claimants had placed on file his income tax returns. Last income tax return shows his income as ₹4,53,000/- per annum but the tribunal has assessed his income as ₹2,47,000/- per annum. As such, income of the deceased assessed by the tribunal is not correct. As the deceased had left behind four dependants, 1/4th of his income could be deducted towards his personal expenses but the tribunal has made deduction of 1/3rd from his income. The tribunal has not made any addition in the income of the deceased towards future prospects. The compensation allowed under conventional heads is not as per the observations of Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009***.

Learned counsel for respondents No.1 and 2 has argued that the tribunal has rightly assessed income of the deceased by taking average income of his last 3-4 years for which income tax returns were produced on file. The last income tax return of the deceased was filed much after his death on 31.10.2007, showing his income as ₹4,53,000/-, while the previous return was showing his income as ₹2,17,000/-. The tribunal rightly took the average of last four years of income of the deceased. Though he has not conceded but could not rebut the submission of learned counsel for the appellants that the claimants are also entitled to addition in the income of deceased towards future prospects and compensation on conventional heads as per the observations of Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***.

While assessing income of the deceased, the tribunal took note of all the income tax returns of the deceased and observed in para 14 of the award as follows:-

> "18. From the evidence of PW.3 Surinder Kumar Kaushal and PW.4 Virinder Singh Sehrawat, it is abundantly proved that the deceased was a government contractor. The claimants have proved on record copies of income tax returns filed by the deceased Naresh Kumar Garg i.e. Mark F showing income of Rs.1.87 Lakhs for the assessment year 2006-07, mark G showing income of 2.17 Lakhs for the assessment year 2005-06, Mark H showing income of Rs.2.36 Lakhs for the assessment year 2004-05. The claimants also placed income tax return Mark D for the assessment year 2007-08 filed on 31.10.2007 i.e. after death of Naresh Kumar Garg showing income of Rs.4.53 Lakhs in which an amount of Rs.1,05,000/- is shown as income from three trucks running. However, this element of income is not shown separately in the earlier income tax returns. So, if said income is not taken into consideration, the income for consideration comes to Rs.3.48 Lakhs. If average of this income is calculated, the same comes to Rs.2.47 lakhs per annum. If 1/3rd is deducted towards, personal expenses, the annual dependency of the claimants come to Rs.1.65 Lakhs."

I find that the tribunal in a very rationale manner, has assessed average income of the deceased during the last four years as his income as the income as shown in last income return was almost double the income of the previous year. This income tax return was filed much after the death of the deceased and the tribunal instead of commenting upon this income tax return, adopted a rationale approach and I find no reason to interfere with the assessment of income of the deceased by the tribunal.

As per the observations in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121,*** which have been affirmed in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra),*** in case, the deceased had left behind 4 to 6 dependants, the deduction towards personal expenses is to be made 1/4th out of income of deceased but the tribunal in this case wrongly deducted 1/3rd of the income of the deceased on this score. The order of the tribunal requires modification to this effect. The tribunal has also not awarded 25% addition in the income of the deceased towards future prospects as per law laid down in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra).*** Appellant-claimant No.1 is also allowed compensation of ₹30,000/- towards loss of consortium, keeping in view the fact that accident and death of Naresh Kumar took place in the year 2010.

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

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹247000 per annum
(ii)	Deduction of 1/4th towards personal expenses of the deceased	₹247000-61750= ₹185250 per annum.
(iii)	25% of above (ii) to be added as future prospects	(₹185250+₹46312)= ₹231512
(iv)	Compensation after multiplier of 13 is applied	(₹231512X13)= ₹3010306/-

Sl.No.	*Heads*	*Calculation*
(v)	Loss of consortium	₹30000
(vi)	Funeral expenses	₹10000
Total		₹30,50,306/-

The appeal has merits and is accepted. The award of the tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹21,55,000/- to ₹30,50,306/- for death of Naresh Kumar Garg. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of the appeal till actual realisation. The amount of enhanced compensation shall be apportioned between the claimants as follows:-

(1). Rekha Garg, widow, : 40%

(2) Neha Garg, (3) Lonia Garg, daughters and : 20% each,

(4) Vikul Garg, son : 20%.

Respondents No.1 and 2 will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal. In case of demise of any of above claimant(s), his/her share of compensation shall be apportioned equally amongst other surviving claimants. The counsel fee is assessed ₹20,000/-.

(SURINDER GUPTA)
JUDGE

January 25, 2018.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***