204

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

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**FAO No.1359 of 2012**
**Date of Decision: 20.11.2018**

Balwinder Kaur and others

Appellants

Versus

Ranjit Singh and others

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Sarju Puri, Advocate
for the appellants.

Ms. Vandanaa Malhotra, Advocate
for the Insurance Company.

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**AVNEESH JHINGAN, J (Oral):**

The legal heirs of Sewa Dass (deceased) are in appeal against award dated 03.01.2012 passed by the Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar (for brevity 'the Tribunal') seeking enhancement of compensation.

The driver of car bearing registration No.PB-08AN-8897 (hereinafter referred to as 'offending vehicle'); owner of offending vehicle and insurer of offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts emanating from the record are that on 22.11.2009, Sewa Dass while driving his motorcycle bearing registration No.PB-32F-6116 was returning to his village Mirpur

Jattan from village Langeri alongwith his daughter. On his way, he was hit by rashly and negligently driven offending vehicle. As a result of the impact, he suffered serious injuries and was taken to Civil Hospital, Nawanshahar, where he succumbed to injuries. FIR No.138 dated 23.11.2009 was registered at Police Station Sadar, Shaheed Bhagat Singh Nagar. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act') was filed by widow, four children and mother of the deceased.

The Tribunal after considering the facts and appreciating the evidence adduced on record held that accident occurred due to rash and negligent driving of the offending vehicle. The driver, owner and insurer were held jointly and severally liable to pay compensation. The Tribunal awarded a sum of ₹8,24,280/- alongwith interest @ 6% per annum. The said amount included ₹20,000/- awarded under conventional heads.

The deceased was working as Head Teacher in a Government School. His monthly salary was proved as ₹30,458/-. He was 54 years old at the time of accident. The Tribunal while considering income of the deceased, deducted ₹18,550/- for income tax payable. Further, family pension of ₹10,580/-, received by family of the deceased was deducted. The Tribunal applied a split multiplier of 7 and 4 considering the age of retirement of the deceased and made 1/3rd deduction for self expenses.

Heard learned counsel for the parties, perused the paper book and relevant documents placed on record.

Learned counsel for the appellants raises four grievances:

(i) that the Tribunal erred in deducting family pension from monthly salary of the deceased;

(ii) that the Tribunal erred in applying split multiplier;

(iii) that the Tribunal has not awarded future prospects; and

(iv) that the amount awarded under conventional heads are on the lower side.

Learned counsel for the insurer defended the award and resisted any further enhancement.

The contention raised by learned counsel for the appellants deserves acceptance.

The gross salary of the deceased less income tax payable is to be considered for awarding compensation. The Supreme Court in the case of ***Manasvi Jain vs. Delhi Transport Corporation, 2014(3) SCC 22***, has 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."*

As per the decision quoted above, monthly salary of the deceased of ₹30,458/- is taken for calculating the loss of dependancy and sum of ₹18,550/- is deducted towards income tax payable.

There is no reasoning given by the Tribunal for applying split multiplier. The Supreme Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** which was approved in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157,*** has held that multiplier is to be applied keeping in view the age of the deceased.

There is no dispute with regard to the fact that deceased was 54 years old at the time of accident, having due regard to the decision of the Supreme Court in ***Sarla Verma's*** case (supra), multiplier of 11 is applied.

The deceased was a government servant and was in age group of 50-60, having due regard to decision of the Supreme Court in ***Pranay Sethi's*** case (supra), 15% future prospects are awarded.

The appellants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to the widow for loss of consortium.

In view of above discussion, compensation is re-calculated as under:-

| Particulars | *Amount (in ₹)* |
|---|---|
| Annual income of the deceased *[30,458 x 12]* | 3,65,496/- |
| Less : Income Tax Payable | (-) 18,550/- |
| Net Income | 3,46,946/- |
| 15% Future Prospects | 52,041/- |
| Sub Total | 3,98,987/- |
| 1/3rd deduction for self expenses | (-) 1,32,996/- |
| Annual Dependancy | 2,65,991/- |
| Applying Multiplier of 11 | **29,25,901/-** |
| Funeral Expenses | **15,000/-** |
| Loss of Estate | **15,000/-** |
| Loss of consortium to widow | **40,000/-** |
| Grand Total | **29,95,901/-** |

The award dated 03.01.2012 is modified to the extent that amount awarded of ₹8,24,280/- by the Tribunal is enhanced to ₹29,95,901/-. The amount awarded for loss of consortium to widow shall be disbursed to the concerned person and balance compensation shall be disbursed to the claimants in the same proportion as was held by the Tribunal.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

**[AVNEESH JHINGAN]**
**JUDGE**

**November 20, 2018**
*pankaj baweja*

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No