

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3969 of 2012
Date of decision: 21.08.2018

Jaswinder Kaur and others Appellants

Versus

Som Nath and others Respondents

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

Present: Ms. Ekta Thakur, Advocate for the appellants.
None for respondent Nos.1 and 2.
Mr. M.B. Jain, Advocate for respondent No.3 – Insurance
Company.

B.S. WALIA, J. (ORAL)

[1] Appeal has been filed by the widow, minor son and daughter as also parents of Gurvinder Singh (aged 32 years) who died in a motor vehicular accident on 16.10.2009, for enhancement of compensation of ₹ 7,40,000/- awarded by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as “the Tribunal”). The Tribunal by taking into account ₹ 5000/- as the income of the deceased and by imposing a cut of 1/4th of the income of the deceased towards personal expenses and by applying multiplier of 16, awarded compensation of ₹ 7,20,000/-, besides, ₹ 20,000/- on account of conventional heads (i.e. ₹ 5000/- for funeral expenses + ₹ 15,000/- on account of loss of love and affection).

[2] Learned counsel appearing for the appellants confined her submissions to the plea that since it had been proved on record that the deceased was working as a Medical Record Technician with Om Security Cleaning Services, Chandigarh against salary of ₹ 8,820/- per month since

05.08.2008, therefore, there was no justification for treating the monthly salary of the deceased @ ₹ 5000/- solely on the ground that the widow of the deceased had admitted that her husband was working on a temporary job. Learned counsel contended that in the circumstances, it was the income of ₹ 8,820/- which was to be taken into account for assessing the compensation payable. Learned counsel further contended that since the deceased was on a fixed salary and less than 40 years of age, therefore, 40% of the established income of the deceased less tax component was to be taken into account for computing future prospects payable. Lastly, learned counsel contended that only a sum of ₹ 5000/- had been awarded towards funeral expenses whereas as per the decision of Hon'ble the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, the appellants were entitled to award of compensation @ ₹ 15,000/- on account of loss of estate, ₹ 15,000/- towards funeral expenses and ₹ 40,000/- on account of loss of consortium respectively besides as per RBI rates for the relevant period interest ought to have been awarded @ 7.5 per annum.

[3] Learned counsel appearing for respondent No.3 – Insurance Company on the other hand contended that the learned Tribunal had rightly assessed the income of the deceased as ₹ 5000/- since he was on a temporary job and further that although the appellants were entitled to award of future prospects and compensation on account of conventional heads in accordance with the decision in Pranay Sethi's case (supra), yet ₹ 15000/- awarded on account of loss of love and affection was liable to be deducted being not covered as a recognized head by the decision in Pranay Sethi's case (supra).

[4] I have considered the submissions of learned counsel for the appellants as well as respondent No.3-Insurance Company and am of the

view that for the reasons as are recorded hereunder, the appeal is liable to be accepted and compensation payable enhanced by modifying the award.

[5] Admittedly, the deceased was working as a Medical Record Technician with Om Security Cleaning Services, Chandigarh since 05.08.2008 on a fixed salary of ₹ 8,820/- per month. The accident took place on 16.10.2009. In the circumstances, the income of the deceased can safely be taken as ₹ 8,820/- per month as proved by PW-3 i.e. the Branch Manager of Om Security Cleaning Services, Chandigarh who proved the salary certificate of the deceased as Ex.P9. Mere fact that the deceased was working on temporary basis is no ground to refuse assessment of income as per salary being received on the ground that there was no job security as the deceased had put in 14 months of service. Accordingly, income of the deceased is assessed as ₹ 8,820/- per month.

[6] As per paragraph No.61 (iv) of the decision in Pranay Sethi's case (supra) where the deceased was on a fixed salary and was less than 40 years of age, 40% of the established income minus tax component is to be taken into account for the purpose of computing future prospects. Paragraph No.61 (iv) of the decision in Pranay Sethi's case (supra) is reproduced as under:-

“61 (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.

[6] Since the deceased was 32 years old and on a fixed salary, 40% of the established income of the deceased less tax component will be taken into account for computing future prospects.

[7] Lastly, the appellants were awarded only ₹ 5000/- for funeral expenses and ₹ 15,000/- on account of loss of love and affection whereas in terms of paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), the appellants are entitled to ₹ 15,000/- on account of loss of estate, ₹ 15,000/- for funeral expenses and ₹ 40,000/- towards loss of consortium. Relevant extract of the decision in Pranay Sethi's case (supra) is reproduced as under:-

Paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra).

“61 (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.”

[8] Accordingly, appellants are held entitled to ₹15,000/-, ₹40,000/- and ₹15,000/- on account of loss of estate, loss of consortium and funeral expenses respectively. However, no amount is payable as compensation on account of loss of love and affection. Further, since the accident took place on 16.10.2009, the appellants are held entitled to interest @ 7.5 per annum as per RBI rates applicable.

[9] In view of the position as noted above, compensation payable works out as under:-

Sr. No.	Heads	Amount assessed by the Tribunal	Amount assessed by the Court
1.	Income	₹ 5000/-	₹ 8820/-

2.	Future Prospects	NIL	40% of ₹ 8820/- = ₹ 3528/-
3.	Total Income assessed	₹ 5000/-	(₹ 8820/- + ₹ 3528/-) = ₹ 12,348/-
4.	Multiplier applied	16	16
5.	Deduction (towards personal expenses of deceased)	1/4 th of ₹ 5000/- = ₹ 1250/-	1/4 th of ₹ 12,348/- = ₹ 3087/-
6.	Dependency (Annual)	(₹ 5000/- - ₹ 1250/-) = ₹ 3750/- (per month) ₹ 3750/- x 12 = ₹ 45,000/-	(₹ 12348/- - ₹ 3087/-) = ₹ 9261/- (per month) ₹ 9261/- x 12 = ₹ 1,11,132/-
7.	Compensation Awarded	₹ 45,000/- x 16 = ₹ 7,20,000/-	₹ 1,11,132/- x 16 = ₹ 17,78,112/-
8.	Loss of Consortium	NIL	₹ 40,000/-
9.	Loss of Estate	NIL	₹ 15,000/-
10.	Funeral Expenses	₹ 5,000	₹ 15,000/-
11.	Loss of Love and Affection	₹ 15,000	NIL
12.	Interest	6%	7.5%
	TOTAL	₹ 7,40,000/-	₹ 18,48,112/-

[10] Accordingly, as against compensation of ₹ 7,40,000/- awarded by the Tribunal, the claimants-appellants are held entitled to compensation of ₹18,48,112/- along with interest @ 7.5 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier.

[11] Needless to mention, compensation be paid to the appellants in accordance with the ratio stipulated in favour of the claimants as per award, but after first making payment of ₹ 40,000/- on account of loss of consortium to the widow as also by deducting the tax liability if any qua the

future prospects payable in accordance with the decision in Pranay Sethi's case (supra).

[12] Learned counsel for respondent No.3 – Insurance Company states that the payment of compensation in terms of award has already been made, therefore, in the circumstances, enhanced interest as claimed by the appellants @ 7.5% per annum be paid only on the enhanced compensation.

Since in the instant case, compensation as awarded by the Tribunal has already been paid, therefore, the enhanced rate of interest @ 7.5% per annum is payable only on the enhanced amount awarded by this Court.

[13] Accordingly, appeal is allowed by modifying Award dated 03.05.2012 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

21.08.2018
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.