IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1615 of 2013
Dated of Decision: 06.08.2018

Bhateri Devi and Ors. …… Appellants

Versus

Vidyadhar Noparam Jat and Anr. ….. Respondents

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

Present: Mr. P.R. Yadav, Advocate
for the appellants.

Mr. Pawan Attri, Advocate
for respondent No.1.

Mr. A.S. Sidhu, Advocate
for respondent No.2.

Mr. Arvind Kumar Yadav, Advocate
for respondent No.3.

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B.S. WALIA, J. (ORAL)

1. Appeal has been filed by the widow and two minor sons aged 9 years and 11 years for enhancement of compensation on account of the death of Satish Kumar husband of appellant No.1 and father of appellants No.2 and 3. By taking the age of the deceased as 36 years income @₹. 5000/- per month by applying multiplier of 15 and by making deduction of 1/3rd of the income of the deceased towards personal expenses, the learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as the "Tribunal") awarded compensation of ₹8,10,000/- including ₹10,000/- on account of loss of

estate, ₹10,000/- on account of loss of consortium, ₹ 5000 towards transportation expenses and ₹5000/- towards funeral expenses.

2. Learned counsel for the appellant has confined his submissions to plea of less assessment of income, non-award of compensation on account of future prospects as also with regard to conventional heads as per entitlement.

3. Learned counsel contended that admittedly the deceased was a truck driver. The accident took place on 19.09.2010. Although salary of the deceased was claimed at ₹9000/- per month besides ₹150/- per day as diet money, the Tribunal assessed the income of the deceased at ₹5000/- per month on the ground that no proof in respect thereto had been led by the appellants-claimant.

4. Learned counsel for the appellants has referred to the decision of Hon'ble the Supreme Court in ***"Minu Rout and another vs. Satya Pradymna Mohapatra and others, 2014(1) SCC (Cri)384*** to contend that in said case as against income of Rs.3000/- assessed by the learned Tribunal as salary of the deceased-car driver who had died in a accident on 08.11.2004, the Hon'ble Supreme Court assessed the income of the deceased at ₹6000/- per month. Learned counsel has also referred to the decision of this Court in ***Bajaj Allianz General Insurance Co. Ltd. Vs. Prem Kumar and others, 2014 (3) PLR 860*** in support of the plea that where income of the driver of TATA 407 vehicle was claimed to be ₹7000/- per month and no proof had been placed on record, a Coordinate Bench of this court by relying upon the decision of Hon'ble the Supreme Court in ***Minu Rout's case (supra)***

assessed the income of the deceased-driver who had sustained injuries in the accident in 2008 at ₹6500/- per month. Reliance was also placed on the decision of the Delhi High Court in ***Mahrunish and others vs. Mohd. Naseem Haider and others, 2013 ACJ 2273***, wherein the salary of a truck driver who had died in an accident on 24.09.2009 was taken at ₹7000/- per month.

5. Relevant extract of the decision of Hon'ble the Supreme Court this Court as well as Hon'ble the Delhi High court is reproduced as under:

Relevant extract of the decision in ***Minu Rout's*** case.

> Therefore, it is urged by the learned counsel that the Tribunal has committed an error on fact by taking ₹3000/- as monthly salary of the deceased for determination of multiplicand by ignoring the fact that the job of a driver is a skilled job. The Tribunal should have taken ₹6000/- per month as the salary of the deceased and 1/3rd should have deducted from his monthly salary towards his personal expenses.
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> The appellants claimed compensation under the heading of loss of dependency as they were all dependents upon the earnings of the deceased Susil Rout. It is an undisputed fact that Susil Rout was working as a driver of the car which is a skilled job. Appellants have stated in the claim petition and in the evidence of PW-1 that the deceased was earning ₹5000/- per month. The oral evidence of PW-1 is not accepted by the Tribunal, solely for the reason that the appellants did not produce documentary evidence to prove the monthly salary of the deceased as ₹5000/- per month as claimed by them. However, it had taken income of the deceased at ₹3000/-, for the purpose of determining the multiplicand. Out of ₹3000/- p.m., 1/3rd amount was deducted towards personal expenses of the deceased and arrived at ₹3,84,000/- towards loss of dependency. Out of that compensation,50% was deducted towards contributory negligence on the part of the deceased and ₹1,92,000/- was awarded

under the above heading. The compensation awarded by the Tribunal is approved b the High Court, which is not only erroneous in law but also suffers from error in law. The Tribunal ought to have taken the salary of the deceased driver at ₹6000/- by taking judicial notice of the fact that the post of a driver is a skilled job. Though the claim of the appellants is ₹5000/- as monthly salary of the deceased for the purpose of determining the loss of dependency, the actual entitlement of the salary of the deceased should have been taken at ₹6000/- per month by the Tribunal for awarding just and reasonable compensation, which is the statutory duty of the Tribunal and the Appellate Court.

Relevant extract of the decision in ***Prem Kumar' s*** case.

This appeal has been filed by Prem Kumar-injured for enhancement of compensation. Counsel for the claimant has argued that the compensation awarded is highly inadequate. The claimant was 26 years old when he met with the accident in 2008 and has suffered 100% disability. This fact has not been denied. As per him, for 100% disability, a sum of ₹2 lacs had to be awarded and, therefore, it has to be held that nothing has been awarded on account of pain and suffering, loss of income, loss of amenities of life and attendant expenses both up-till now and for future medical treatment.

I find this to be correct. Prem Kumar was the driver of TATA 407 vehicle and it was claimed that his income was ₹7000/- per month. However, no proof has been placed on record. Counsel for the appellant has relied upon a decision of the Hon'ble Supreme Court in Minu Rout v. Satya Pradumna Mohapatra, 2013 (4) RCR (Civil) 871 where the income o a driver in the year 2006 was taken at ₹6000/- per month, and states that in the year 2004, the income must be taken to be more.

I accept this argument and take the income at ₹6500/- per month. Since the appellant was 26 years of age, he would be entitled to 50% as future prospects. Since he suffered 100% disability, the entire income worked out would be loss of income and multiplier of 17 would be applicable in the present case. I further awarded a sum of ₹1 lac for pain, and suffering, ₹1 lac of amenities of life and ₹1 lac for future medical expenses.

Relevant extract of the decision in ***Mohd. Naseem Haider's*** case.

> 1. The Appellant seeks enhancement of compensation of ₹5,47,460/- awarded for the death of Gulam Haider, who was aged 49 years and died in a motor accident which occurred on 24.09.2009. There is no Appeal by the driver, insured and insurer; thus I am not to go into the question of negligence.
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> 2. The Claims Tribunal in the absence of any documentary evidence did not rely upon the affidavit of Mehrunisa, the deceased's wife who claimed the deceased's income to be ₹8,000/- per month. The Tribunal took the minimum wages of skilled worker i.e. ₹4377/- deducted 25% towards personal expenses as the number of dependants was 5 and applied multiplier of '13' as per the age of the deceased.
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> 3. It is true that the Appellants were unable to place on record any proof with regard to the deceased employment and his actual income. The Appellant No.1 was a resident of Bihar. The deceased's driving licence Ex.PW-1/3 to drive MMV/HMV was proved on record. The accident took place while the deceased was driving the truck with another truck. In the circumstances, it is established that the deceased was working as a truck driver. The salary of a truck driver, a bus driver, a motor car driver cannot be the same although all of them are skilled worker. In my view, salary of a truck driver can be assumed to be at ₹250/- per day i.e. ₹7500/- per month. On applying the principle of Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, the loss of dependency come to ₹8,77,500/- (7500x12x13x3/4).

6. Per contra, learned counsel for the respondents argued that the minimum wages of a skilled labourer in the year 2010 were ₹4998/- therefore, the income of the deceased was rightly assessed at ₹5000/- per month.

7. I have considered the submissions of learned counsel for the parties. The judgment of Hon'ble the Supreme Court, this court as well as the Delhi High Court assesses the income of car/truck driver at

₹6000/-, ₹6500/-and ₹7500/- per month respectively for the years 2004, 2008 and 2009. Accident in the instant case took place on 19.09.2010. In the light of assessment of income made by different Courts as referred to above, I am of the considered view that ₹8000/- per month can be assessed as the income of the deceased truck driver as on date of death i.e. 19.09.2010. Secondly, the Tribunal took the age of the deceased as 36 years and awarded future prospects @ 30% of the income of the deceased. Hon'ble the Supreme Court in ***National Insurance Co. Ltd vs Pranay Sethi,*** held that where the deceased was less than 40 years of age and against fixed salary, addition of 40% of the established income of the deceased less tax was to be taken into account while computing future prospects. Paragraph 61 (iv)of the decision in ***Pranay Sethi's*** case ***(Supra)*** is reproduced as under:

> (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.

8. Accordingly since the deceased was working as a truck driver on a fixed remuneration and was less than 40 years of age, therefore, 40% of the established income is to be taken into account while computing the future prospects. Likewise, in terms of paragraph No. 61(viii) of the decision in ***Pranay Sethi's*** case ***(Supra)*** a sum of ₹15000/-, ₹40,000/- and ₹15000/- respectively is awardable on account of loss of estate, loss of consortium and funeral expenses respectively. In

other words, ₹70,00/- was to be awarded on account of aforementioned three heads whereas the appellants were awarded only ₹25000/-. Accordingly it is held that the appellants are entitled to ₹15000/- on account of loss of estate ₹15000/- for funeral expenses and ₹40,000/- on account of loss of consortium.

9. Accordingly, compensation payable works out as under:

Sr. No.	Heads	Amount assessed by the Tribunal	Amount assessed by this Court
1	Income	₹5000/-	₹8000/-
2	Future Prospects	30% of ₹5000/-=₹1500	40% of ₹8000=₹3200
3	Total monthly income	₹5000+₹1500-₹6500	₹8000+₹3200=₹11200
4	Deduction towards personal expenses	1/3rd of ₹6500=₹2167 ₹6500-₹2167-₹4334	1/3rd of ₹11200=₹3733 ₹11200-₹3733-₹7467
5	Multiplier	'15'	'15'
6	Dependency	₹4334x12x15=₹7,80,000/-	₹7467x12x15=₹1344060
7	Loss of consortium	₹10,000	₹40,000
8	Loss of Estate	₹10,000	₹15,000
9	Transportation Expenses	₹5000	Nil
10	Funeral expenses	₹5,000	₹15,000
	Total	**₹8,10,000/-**	**₹14,14,060/-**

10. Accordingly, in view of the position as noted above, as against the compensation of ₹8,10,000/- awarded to the appellants, the appellants are held entitled to award of compensation of ₹14,14,060/- along with interest @7.5% per annum w.e.f. the date of accident till 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 the decision in ***Pranay Sethi's*** case (Supra)

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

6th August, 2018 **[B.S. WALIA]**
Manju **JUDGE**

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No