IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.2585 of 2013 (O&M)
Date of Decision: 24.07.2018

Sharmila Devi and others

... Appellants

Versus

Mahavir Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Ashwani Bakshi, Advocate,
for the appellants.

Mr. Arun Sharma, Advocate for
Mr. T.K.Joshi, Advocate,
for respondent No.3.

TEJINDER SINGH DHINDSA, J.

This is a claimants' appeal seeking enhancement of compensation.

Brief facts that may be noticed are that Naresh Kumar died in a vehicular accident on 10.01.2011 while he was performing his duties in the capacity of a Security Guard at Toll Tax Barrier, Damla, District Yamuna Nagara A truck bearing registration No. HR-69-6900 being driven by Mahavir Singh (respondent No.1) and owned by Surinder Singh (respondent No.2) is stated to have struck against Naresh Kumar and thereby having caused his death.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed in the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri by the claimants/present

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appellants who happen to be the widow, two minor sons and mother of the deceased. Compensation to the tune of Rs.20 lakhs was claimed.

Upon pleadings of the parties, the following issues were framed by the trial Court:-

1. ***"Whether Naresh Kumar died due to the injuries sustained by him in a motor vehicle accident which took place on 10.01.2011 in the area of Police Station Sadar Yamuna Nagar on account of rash or/and negligent driving of the truck bearing No.HR-69-6900 by respondent No.1 which is owned by respondent No.2 and insured by respondent No.3 as alleged?OPP.***
2. ***If issue No.1 is proved, whether the claimants are entitled to any amount as compensation? If so, to what amount and from whom? OPP.***
3. ***Whether the insured has violated the terms and conditions of the insurance policy as well as provisions of the Motor Vehicles Act, 1988 and as such, the insurance company is absolved of its liability to pay the amount of compensation? OPR-3.***
4. ***Relief."***

As regards issue No.1, the same was answered in favour of the claimants and it was held that Naresh Kumar (deceased) had died due to the rash and negligent driving of the offending vehicle by respondent No.1. Insofar as issue No.2 is concerned, the Tribunal has noticed the age of the deceased to be 30 years and taken his monthly income to be Rs.6700/- per month

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in the light of deposition of Jeet Lal PW-4, who was the Director of Jeet Security Services and with whom the deceased was working as a Security Guard. 30% increase over and above the income of Rs.6700/- has been allowed towards future prospects and a cut off 1/4th towards personal expenses has been imposed. Accordingly, dependency of the claimants was assessed to be Rs.6698/- per month and Rs.80,376 (6698 X 12) per annum. A multiplier of 17 has been applied and the compensation has been assessed to Rs.13,66,392/- (80,376 X 17). Further more, widow has been held entitled to a sum of Rs.10,000/- as loss of consortium. A sum of Rs.5,000/- has been awarded towards loss of estate and identical sum of Rs.5000/- towards funeral expenses. A total sum of Rs.13,86,392/- has been awarded and the owner/driver and insurer of the offending vehicle have been held liable to pay the amount jointly and severally.

Since the only issue arising in the instant appeal is with regard to the quantum of compensation, I have heard Mr. Ashwani Bakshi, Advocate for the appellants and Mr. Arun Sharma, Advocate for the contesting respondent No.3-Insurance Company.

The expression "just compensation" was considered by the Supreme Court of India in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77*** and it was held that compensation awarded by the Tribunal does not become "just" merely because the Tribunal considered at to be does not just. The expression "just" is adequate compensation which is fair and equitable on the facts and circumstances of the

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case so as to make good loss suffered as a result of the wrong as far as money can do so, by applying the well settled principles relating to award of compensation.

Adverting back to the facts and circumstances of the present case, this Court is of the considered view that the compensation awarded by the Motor Accident Claims Tribunal needs to be revised in view of the parameters laid down by the Apex Court in the recent Constitution Bench Judgment in ***National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) RCR (Civil) 1009.***

Deceased widow (appellant No.1 herein) had deposed that her husband was employed on a salary of Rs.6700/- per month with Jeet Security Services and was also earning Rs.1500/- per month as a LIC Agent. Tribunal has considered the deposition of Jeet Lal, Director of Jeet Security Services PW-4 to be credible and on the basis thereof has accepted the monthly income of the deceased to be Rs.6700/- per month. Submission raised by counsel for the appellant that the Tribunal has not taken into account the income earned by the deceased while working as an agent of LIC is not well founded. It has gone uncontroverted that PW 1 Ashok Kumar who was a colleague of the deceased had deposed that the duty hours at the Toll Barrier were from 8 a.m. to 8 p.m. Under such circumstances, the view taken by the Tribunal that there was hardly any time left over for the deceased to pursue his occupation of a LIC agent cannot be faulted. Further more, income that may have been earned by the deceased in the

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capacity of a LIC agent would be on commission basis and there was no evidence adduced before the Tribunal to arrive at a notional figure towards income and to be added to the monthly salary of the deceased who otherwise was engaged as a Security Guard at Toll Tax Barrier. Accordingly, the income of the deceased would be taken as Rs.6700/- per month and as has been accepted by the Tribunal.

The Tribunal in the award dated 12.11.2012 has awarded a 30% increase over and above the income of Rs.6700/- towards future prospects. The age of the deceased has been taken as 30 years at the time of his death in the light of post mortem report Ex. P-4. By applying the parameters in ***Pranay Sethi's Case (supra)*** since the deceased was on a fixed salary and was below the age of 40 years and an addition of 40% of the established income towards future prospects is granted.

The amount of compensation awarded on conventional heads, namely, loss of estate, loss of consortium and funeral expenses would stand enhanced to Rs.70,000/- as per ***Pranay Sethi's judgment.***

In view of the discussion made above, the compensation awarded to the claimants/appellants are assessed as follows:-

Sr. No.	Head	Calculation
1.	Income 6700/- p.m.	Rs.6700 + 40% future prospects =6700+2680=Rs.9380/-

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2.	1/4th deduction towards personal expenses of the deceased	Rs.9380-2345=7035/- Rs. 7035 x 12=84,420/-
3.	Compensation after applying multiplier of 17	Rs. 84,420 x 17=14,35,140/-
4.	Conventional Heads: loss of consortium, loss of estate, funeral expenses	Rs.70,000/-
	Total	Rs.15,05,140/-

The enhanced compensation as calculated hereinabove is directed to be released in favour of appellant No.1 being the widow of the deceased as also guardian/mother of the two minor children along with 6% interest from the date of filing of the claim petition till realization.

Appeal is allowed in the aforesaid terms.

24.07.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No

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