IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210 **FAO-3471-2013**

Date of Decision:13.03.2018

Saroj Devi and others .....Appellants

Versus

Mukesh Kumar and others .....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Pardeep Sehrawat, Advocate for Mr. Vivek Goyal, Advocate, for the appellants.

Mr. Rajbir Singh, Advocate for respondent No.3-Insurance Company.

****

HARI PAL VERMA, J.(Oral)

Appellants-claimants have filed the present appeal seeking enhancement of compensation over and above the amount, as awarded by the Motor Accident Claims Tribunal, Jind (for short "the Tribunal") vide award dated 15.01.2013.

As per the claim petition, on the fateful day i.e., 03.12.2011, when deceased-Karamvir was on his way from village Kithana to village Pega on his motorcycle bearing registration No.HE-31M-2792 and had reached little ahead of Rajaund-Badhana Minor on Kaithal-Jind road, the offending vehicle i.e. Tata-407 Canter bearing registration No.DL-01LD-1804 driven by respondent No.1 in a rash and negligent manner came from the opposite/wrong side and hit the motorcycle of the deceased. As a result thereof, Karamvir fell down and sustained fatal injuries due to which he was shifted to General Hospital, Kaithal, where he succumbed to his injuries. An

FIR No.178 dated 04.12.2011 in Police Station, Rajaund, District Kaithal, was registered against respondent No.1 regarding the accident. The deceased was employed as a Head Constable in ITBP and was posted in Chandigarh. He was drawing a salary of ₹25,000/- per month.

In a claim-petition filed under Section 166 of the Motor Vehicles Act, 1988, the claimants, who are widow, minor sons and old parents, the Tribunal awarded a total compensation of ₹23,33,024/- on account of death of Karamvir, in a motor vehicular accident, which took place on 03.12.2011.

Not satisfied with the aforesaid compensation, the appellants have filed the present appeal seeking enhancement of compensation.

Learned counsel for the appellants has argued that the Tribunal has wrongly deducted an amount of ₹4,000/- towards family pension from the gross salary of the deceased. He has further argued that the claimants were entitled to get compensation under the head of future prospects, as well as under the conventional heads, as held by the Hon'ble Apex Court in case **National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) R.C.R (Civil) 1009.**

On the other hand, learned counsel for respondent No.3-Insurance Company is fair enough to concede that family pension is not required to be deducted from the income of the deceased. But at the same time, he has argued that deceased Karamvir was about 30 years of age and therefore, the Tribunal was required to apply multiplier 17 instead of 18.

He has further argued that in view of law laid down by Hon'ble Apex Court in **Sarla Verma and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121,** the appellant No.4-Shital, father of deceased cannot be considered as dependent upon the deceased, being class-II legal heir and as such 1/3rd deduction was required to be made instead of 1/4th.

I have heard learned counsel for the parties.

Para 15 of the judgment in **Sarla Verma's case (supra)** reads as under:-

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically.* ***Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent.*** *In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

In the present case, the insurance company has failed to adduce any evidence, that appellant No.4-Shital, father of deceased was having any independent source of income. PW-1 Saroj Devi (widow of deceased) in her deposition has categorically stated that they all including appellant No.4-Shital, father of deceased, were totally dependent upon the earning of deceased. Thus, in the absence of any evidence to the contrary, the Tribunal has rightly deducted 1/4th amount towards the personal expenses of the deceased.

The argument raised by learned counsel for the appellants that the claimants are entitled to compensation under the head of future prospects and conventional heads carries weight. Therefore, as held in **Pranay Sethi's case(supra)**, the claimants are held entitled to compensation under the head of future prospects and under the conventional heads. Since the deceased was 30 years of age, as held by the Hon'ble Supreme Court in **Sarla Verma's case (supra),** multiplier 17 was required to be applied instead of 18. Further, as the deductions on account of special pay, transportation allowance, washing allowance and ration money, which were attached with the deceased, these allowances have rightly been deducted from the gross salary of the deceased. After making deductions of these allowances, his monthly income comes to ₹18,186/- per month. The amount of family pension is not required to be deducted from the salary and this fact has duly been accepted by learned counsel appearing for the respondent-Insurance Company.

Accordingly, with the assistance of learned counsel for the parties, this Court finds that the claimants are entitled for compensation in the following manner:-

Monthly income	:	₹18,186/-
Future prospects (50%)	:	₹9,093/-

Total monthly income	:	₹27,279/-
Annual income	:	₹3,27,348/-
Income tax	:	₹15,177/-
Annual income (after tax deduction)	:	₹3,12,171/-
Annual dependency (1/4th deductions)	:	₹2,34,128.25
Total loss of dependency (₹2,34,128.25 x 17)	:	₹39,80,180.25
Loss of estate	:	₹15,000/-
Funeral expenses	:	₹15,000/-
Loss of consortium	:	₹40,000/-
Total amount of compensation	:	₹40,50,180.25
Amount already awarded	:	₹23,33,024.00
Enhanced amount	:	₹17,17,156.25
Rounded off	:	₹17,17,156/-

The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing the claim-petition till its realization.

With the aforesaid modification in the award, the present appeal stands disposed of.

March 13, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No