IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3701 of 2013
Date of Decision: 22.11.2018.

Diwan Singh

...Appellant

Versus

Shankar Lal and others

....Respondents

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

Present: Mr. Amit Singla, Advocate and
Ms. Poorva Gupta, Amicus Curiae,
for the appellant.

Ms. Kusum Raj, Advocate for
Mr. S.S. Sahu, Advocate
for respondent Nos.1 and 2.

Mr. Varun Mittal, Advocate and
Mr. Anshul Sharma, Advocate for
Mr. Vikas Mohan Gupta, Advocate
for respondent No.3.

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B.S.WALIA, J (Oral).

1. Appeal has been filed for enhancement of compensation of ₹2,10,600/- awarded by the learned Motor Accidents Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal') on account of injuries sustained by the appellant in a motor vehicular accident on 29.01.2010.

2. The appellant suffered fracture of leg near ankle joint for which medical procedure for fixation of plate and screw with union was performed resulting in restriction of movement of left ankle joint with swelling. There was also fracture of left ribs with non-union and disability was assessed at about 20%. The Tribunal by taking into account the aforementioned injury as also the age of the appellant as '59' years and that no evidence has been led to show that the appellant was working as mechanic and earning ₹15,000/- per

month, treated his income as unskilled labourer at ₹4,000/- per month and by applying multiplier of ‘9’, by taking into account the loss of income for four months @ ₹4,000/- per month i.e. ₹16,000/-, by awarding ₹3300/- as transportation charges, ₹3000/- (750x4 months) as attendant charges, ₹2500/- as special diet and nutrition, ₹81,000/- as medical expenses, ₹15,000/- (7500x 2 months) on account of pain and suffering, ₹20,000/- (20x1000 i.e. ₹1000/- per 1% disability) and ₹64,800/- on account of loss of future earning, awarded a total compensation of ₹2,10,600/-.

3. Learned counsel for appellant contends that no amount was awarded on account of future prospects despite entitlement, whereas appellant was entitled to award of 10% of the established income as future prospects in terms of decision of Hon’ble the Supreme Court in V. Mekala vs. M. Malathi and another 2014 (11) SCC 178 as also in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009.

Admittedly, deceased was 59 years of age. As per paragraph No.61 (iv) of the decision in Pranay Sethi’s case (supra), where the deceased was on fixed salary and between the age of 50 to 60 years, 10% of the established income of the deceased, less tax component, is to be taken into account while computing the future prospects payable. Paragraph No.19 of the decision in V.Mekala’s case (supra) and 61(iv) of the decision in Pranay Sethi’s case (supra) are reproduced as under:-

> 19. Therefore, in the light of the principles laid down in the aforesaid case, it would be just and proper for this Court, and keeping in mind her past results we take ₹10,000/- as her monthly notional income for computation of just and

reasonable compensation under the head of loss of income. Further, the High Court has failed to take into consideration the future prospects of income based on the principles laid down by this Court in catena of cases referred to supra. Therefore, the appellant is justified in seeking for re-enhancement under this head as well and we hold that the claimant- appellant is entitled to 50% increase under this head as per the principle laid down by this Court in the case of Santosh Devi (supra). The relevant paragraph reads as under:

> "13. In Sarla Verma's case (supra), another two Judge Bench considered various factors relevant for determining the compensation payable in cases involving motor accidents, noticed apparent divergence in the views expressed by this Court in different cases, referred to large number of precedents including the judgments in U.P. SRTC v. Trilok Chandra (1996) 4 SCC 362, Nance v. British Columbia Electric Railway Company Ltd. 1951 AC 601, Davies v. Powell Duffryn Associated Collieries Ltd. 1942 AC 601 and made an attempt to limit the exercise of discretion by the Tribunals and the High Courts in the matter of award of compensation by laying down straightjacket formula under different headings, some of which are enumerated below:
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> (i) Addition to income for future prospects In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and

uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Therefore, taking both the aspects into account, the total amount of compensation under this head is calculated as ₹22,68,000/- [₹10,000/- x 70/100 + 10,000 x 70/100 x 50/100) x 12 x 18]

Pranay Sethi's case

(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.

4. Since in the instant case, the appellant was 59 years of age and his income was assessed at ₹4000/- per month as unskilled labourer, 10% of the established income of the appellant less tax component shall be taken into account for computing the future prospects payable.

5. Learned counsel further contends that lesser amount on account of loss of income had been awarded and qua transportation charges an amount of ₹3300/- was awarded whereas same ought to have been awarded @ ₹1200/- per month for four months. As regards loss of income, the same does not call for any interference as admittedly the appellant failed to lead any evidence to show that he was a mechanic and was earning more than that what has been assessed by the Tribunal. I find the prayer of the appellant qua transportation charges to be reasonable and accordingly, transportation charges are awarded @ ₹ 1200/- for four months i.e. ₹4800/- as against a sum of ₹3300/- awarded by the Tribunal.

6. Accident took place on 29.01.2010, whereas attendant charges of ₹3000/- only have been awarded (₹750 x 4 month). The same is contended by the learned counsel for the appellant to be on the lower side. I find merit in the plea raised by learned counsel for the appellant. Accordingly, the attendant charges are enhanced to ₹3000/- per month for four months i.e. ₹12,000/- as against ₹3,000/- awarded by the Tribunal. Likewise a sum of ₹2,500/- has been awarded on account of special diet and nutrition, whereas the same ought

to have been for a minimum of four months. Accordingly, special diet and nutrition is also enhanced to ₹2,500/- per month for four months i.e. ₹10,000/- as against ₹2,500/- awarded by the Tribunal. As regards medical expenses, the same does not warrant any interference. A sum of ₹15,000/- was awarded on account of pain and suffering while a sum of ₹5000/- was awarded on account of surgery/trauma for operation. Learned counsel contends that taking into account the injuries sustained and surgery which the appellant underwent, the compensation on account of pain and suffering is liable to be enhanced. I find merit in the prayer of learned counsel for the appellant for the reasons that the appellant suffered fracture of leg near ankle joint for which medical procedure of fixation of plate and screw with union was performed resulting in restriction of movement of left ankle joint with swelling. There was also fracture of left ribs with non-union for which the appellant would have been in pain and suffering for considerable period of time. Therefore, taking into account all aspects of the matter, compensation of ₹20,000/- awarded on account of pain and suffering/surgery/trauma for operation is enhanced to ₹ 50,000/-. The appellant also suffered disability of about 20% for which he was awarded a sum of ₹20,000/-. Learned counsel contends that the same ought to have been raised to ₹2000/- per 1% disability i.e. 20x2000 i.e. ₹40,000/- in view of decision of this Court in Ram Kiran Goyal vs. Sub Divisional Engineer, Mechanical and others 2008 (2) RCR (Civil) 2013. Learned counsel for the respondents have not been able to dispute the prayer for enhancement of compensation on the aforementioned account. Relevant extract of the decision of this Court in Ram Kiran Goyal's case (supra) is reproduced as under:-

> 14. So far as the above authority is concerned, learned Single Judge has already assessed the compensation separately for both pecuniary and non pecuniary damages as the compensation has been awarded under separate heads i.e. permanent disability and pain and suffering, medicines and future loss of income and we do not find any scope for enhancement of compensation. So far as the disability certificate Ex.P-18 is concerned, it does not inspire any confidence having been obtained from a private doctor, though the other treatment is taken from the government hospital. However, the compensation which has been awarded for admitted permanent disability needs to be enhanced and for that, we are inclined to follow the decision of Division Bench of this Court referred to above where ₹2,000/- has been awarded for 1% disability to the injured. On that count, the compensation in respect of permanent disability which is awarded vide Ex.P31 as 55%, the compensation is thus, assessed @ ₹2,000/- for every 1% disability to

7. Lastly learned counsel for the appellant contends that loss of future earning was wrongly assessed at the rate of 15% of the established income of the appellant, whereas same should have been awarded @ 20% i.e as per the disability assessed. I find merit in the submission of the learned counsel, therefore, the same is awarded @ 20% as also 10% of future prospects are liable to be added to the same and would work out to ₹4000/-+₹400/-= ₹4400/- (₹4400x20/100=₹880/- and by applying the

multiplier of '9' the future earning would work out to ₹880x12x9=₹95040/. In the circumstances, the amount on account of future earning is enhanced from ₹64,800/- to ₹95,040/-.

8. Accordingly, as against the compensation of ₹2,10,600/- awarded by the Tribunal, the appellant is held entitled to award of compensation of ₹3,08,840/- along with interest @ 9 w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid. Needless to mention, the Insurance Company shall make payment of compensation to the appellant after making deduction of the tax liability, if any, towards future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

9. Accordingly, appeal is allowed and award dated 09.10.2012, passed by the Tribunal is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

22.11.2018
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No