IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.284 of 2014
Date of Decision:-14.09.2018

Kamlesh and others. ...Appellants

Versus

Vaishnav Moti Lal and others ...Respondents

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

Present:- Mr. Sumit Sangwan, Advocate
for the petitioners.

None for respondent Nos.1 and 2.

Ms. Vandana Malhotra, Advocate with
Ms. Monika Jangra, Advocate
for respondent No.3-Insurance Company.

B.S.WALIA J.(Oral).,

1. Appeal has been filed by the widow, mother and two minor daughters of Sandeep, who died in a motor vehicular accident on 25.03.2010.

2. Learned Motor Accidents Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') by taking into account the monthly income of the deceased as ₹5515/-, by applying multiplier of 16 and by making deduction @ 1/4th of the income of the deceased towards his personal expenses, worked out dependency at ₹7,94,304/-. Thereafter by awarding a sum of ₹5000/- on account of transportation charges, ₹10,000/-

towards funeral expenses, ₹10,000/- towards loss of consortium, awarded ₹8,19,304/- as compensation along with interest @ 6% per annum.

3. Learned counsel for the appellants has challenged the award and sought enhancement of compensation on the ground that deductions made out of the net monthly income of Rs.6400/- are legally impermissible, besides no future prospects were awarded despite entitlement. Moreover, compensation on account of conventional heads was not correctly awarded.

4. Learned counsel for the appellants has relied upon the decision of Hon'ble the Supreme Court in **Manasvi Jain vs Delhi Transport Corporation and others-2014 ACJ 1416** to contend that except for deduction on account of income tax, no other deduction on account of Provident Fund, house rent etc. can be made. Learned counsel contends that in fact no amount was deductable as during the relevant period i.e. the year 2010, no intome tax was payable as the income was less than ₹1,00,000/- and even if the monthly salary of the petitioner was taken as ₹6400/-, annual income of the deceased would work out to ₹76,800/- which was less than the taxable limit.

5. The aforementioned factual position is not disputed by learned counsel for the respondent-Insurance Company.

6. Relevant extract of the decision in Manasvi Jain's case (supra) is reproduced as under :-

> "13. In the present case, there is no dispute about the salary of the deceased. As per salary certificate, his monthly income and deductions are as under:
>
> Monthly Income ₹26,950/-

Deductions:	
Provident Fund	₹8,000/-
House Rent	₹525/-
G.I.S.	₹120/-
Income Tax |	₹2,500/-

So, from the above table, it is clear that except an amount of ₹2,500/- towards Income Tax, rest of the amounts were voluntarily contributed by the deceased for the welfare of his family. Considering the decision of this Court in Shyamwati Sharma & Ors., (supra), in our opinion, except contribution towards Income Tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary. Hence, the take home salary of the deceased comes to ₹24,450/- which can be rounded to ₹25,000/-."

7. Accordingly, in the light of position as noted above, income of the deceased is taken as ₹6400/- per month i.e. the salary payable by the employer to the deceased as per salary Certificate (Ex. P-4). As regards the claim for payment of future prospects, the deceased was 35 years of age, was working on fixed salary, therefore in accordance with paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others 2017(4) RCR (Civil) 1009,** 40% of the established income of the deceased less the tax component is to be taken into account for computing the future prospects payable. Paragraph 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."

In the light of the position noted above, 40% of the established income of the deceased, less the tax component is taken into account for the purpose of computing the future prospects payable.

8. Appellants have also claimed award of appropriate compensation under conventional heads. Admittedly, the appellants were awarded a sum of ₹5,000/- towards transportation charges, ₹10,000/- towards funeral expenses and ₹10,000/- towards loss of consortium. However, in view of paragraaph No. 61(viii) of the decision in Pranay Sethi's case (supra), the appellants are entitled to award of ₹15,000/- on account of funeral expenses, ₹15,000/- for loss of estate, while the widow is entitled to ₹40,000/- on account of loss of consortium. However, no amount is payable towards transportation charges. For the sake of reference, paragraph No.61(viii) of the decision in Pranay Sethi's case (supra) is reproduced as under :-

> "(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. The aforesaid

amounts should be enhanced at the rate of 10% in every three years.”

Accordingly, in the light of the aforementioned decision, the appellants-claimants are held entitled to award of ₹70,000/- on account of conventional heads.

9. Appellants are also held entitled to award of interest @ 9% per annum in the light of decision of Hon'ble the Supreme Court in Municipal Corporation of Delhi vs. Association of Victims of Uphaar Tragedy 2001 (14) SCC 481.

10. In the light of the position as noted above, the compensation payable works out as under:-

	Amount assessed by Tribunal	By this Court (in ₹)
Income assessed	₹5515/-	₹6400/-
Future Prospects	NIL	(40% of 6400/-)=₹2560/-
Multiplier	16	16
Deduction towards personal expenses	1/4th of ₹5515- ₹1378/-	1/4th of ₹8960-₹2240/-
Total Income	₹5515- ₹1378/- = ₹4137/-	₹8960-₹2240/-=₹6720/-
Dependency	₹4137x12x16=₹7,94,304/-	₹6720x12x16=₹12,90,240/-
Transportation charges	₹5000/-	NIL
Loss of Consortium	₹10,000/-	₹40,000/-
Funeral Expenses	₹10,000/-	₹15,000/-
Loss of Estate	NIL	₹15,000/-
TOTAL	₹8,19,304/-	₹13,60,240/-

11. Accordingly, in the light of the position as noted above, the appellants are held entitled to compensation of ₹13,60,240/- as against ₹8,19,304/- awarded by the Tribunal along with interest @ 9% per annum

on the enhanced amount w.e.f. the date of claim petition till the date of payment less payment already made. Needless to mention payment of compensation shall be made after first making payment of ₹40,000/- on account of loss of consortium to the widow as also by making deduction on account of income tax if any payable in respect of future prospects in accordance with the decision in Pranay Sethi's case (supra).

12. Appeal is allowed and the award dated 04.10.2013 is modified to the extent as noted above.

September 14, 2018 **(B.S.WALIA)**
Vijay Asija **JUDGE**

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