IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.8026-CII of 2018 and
FAO No.3773 of 2014

Date of decision: 27.08.2018

Pudal …… Appellant

Versus

Harjinder Singh and another ….. Respondents

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

Present: Mr. Vishal Munjal, Advocate for the appellant.
Mr. S.K. Choudhary, Advocate for respondent No.1
Mr. S.S. Sidhu, Advocate for respondent No.2.

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<u>B.S. WALIA, J. (ORAL)</u>

<u>CM No.8026-CII of 2018</u>

For the reasons as are mentioned in the application, the same is allowed. Order dated 07.01.2015 (Annexure A1) passed by the learned Motor Accidents Claims Tribunal, Pathankot is taken on record.

<u>FAO No.3773 of 2014</u>

[1] Appeal has been filed by the mother of Gokul who died in a motor vehicular accident which took place on 03.02.2011 between car in which the deceased was riding as passenger along with Deepak Kumar and the offending truck No.PB-06 – J – 2652. Prayer is for setting aside of the award dated 02.09.2013 passed by the learned Motor Accidents Claims

Tribunal, Pathankot (hereinafter referred to as 'the Tribunal'), for allowing the claim and awarding compensation as claimed.

[2] Initially, I was inclined to remand the matter to the learned Tribunal to consider and decide the matter afresh in the light of Annexure A1. However, learned counsel for the appellant states that the only point in issue was that negligence of the offending truck driver had not been established, therefore, the claim petition had been dismissed. Learned counsel states that in view of Award in the case of Deepak Kumar who was also riding in the same car which was hit by the offending truck and negligence of the offending truck driver having been established, the matter could be decided by this Court especially since the claimant is a widow and a labourer thus underprivileged, besides, from the lower strata of society.

[3] Learned counsel for respondent No.2 does not oppose the prayer for adjudication of the claim by this Court.

[4] A perusal of Annexure A2 (i.e. post-mortem report reveals that the deceased was 18 years of age. He was working as a Labourer. Income claimed was ₹ 7,000/- per month, however, no evidence was led in respect of either the deceased being a labourer or of earning ₹ 7,000/- per month.

[5] Learned counsel for respondent No.2 states that the income of ₹ 7000/- claimed to be the earning of the deceased was exorbitant and at best the deceased could be treated to be a labourer and earning minimum wages for the relevant period which, in this case as per the notification No.S.O.2/C.A.11/1948/S.5/2009 dated 06.01.2009 issued by the Government of Punjab for the relevant period i.e. 01.09.2010 to 28.02.2011 (in the case of unskilled labourer is ₹ 141.98 per day). However, it cannot be presumed that the deceased would have got employment on all days in

the month. In the circumstances, it is estimated that the deceased would have got employment for at least 25 days in a month. Accordingly, the income of the deceased is calculated at ₹ 141.98 per day (i.e. ₹ 142/- x 25 = ₹ 3550/- per month). Since, the deceased was 18 years of age, therefore, multiplier of 18 is applicable for working out the compensation payable in accordance with paragraph No.42 of the decision of Hon'ble the Supreme Court in **Sarla Verma vs Delhi Transport Corporation', 2009 ACJ 1298** as upheld in **National Insurance Company Limited v. Pranay Sethi and others, 2017(4) RCR (Civil) 1009.** Relevant extract of the decision in **Sarla Verma's** case (supra) is reproduced as under:-

> *"42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

Accordingly, multiplier of 18 will be applicable.

[6] As regards the deduction is to be made, paragraph No.30 of the decision in Sarla Verma's case (supra) as has been upheld in Pranay Sethi's case (supra) is applicable. The deduction, where the deceased left behind a mother and other family members, is to be made @ 50% since only the mother is to be treated to be the dependent. Paragraph No.30 of the decision in Sarla Verma's case (supra) is reproduced as under:-

> *"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra4, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."*

Accordingly, it is held that 50% deduction shall be made out of the income of the deceased towards his personal expenses.

[7] As per paragraph No.61 (iv) of the decision in Pranay Sethi's case (supra), since the deceased was self-employed and less than 40 years of age, therefore, 40% of the established income, minus the tax component, is to be taken into account for computing the future prospects payable. Paragraph No.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 circumstances, 40% of the established income of the deceased less tax component would be taken into account for computing the future prospects payable.

[8] Further in terms of paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), since the deceased was bachelor, the appellant is entitled to ₹ 15,000/- each on account of loss of estate and funeral expenses respectively. Relevant extract of the decision in Pranay Sethi's case (supra) is reproduced as under:-

> **Paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra).**
>
> *"61 (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

[9] In view of the position as noted above, compensation payable works out as under:-

Sr. No.	**Heads**	**Amount assessed by the Tribunal**	**Amount assessed by the Court**
1.	Income	NIL	₹ 3550/-
2.	Future Prospects	NIL	40% of ₹ 3550/- = ₹ 1420/-
3.	Total Income assessed	NIL	(₹ 3550/- + ₹ 1420/-) = ₹ 4970/-
4.	Multiplier applied	NIL	18
5.	Deduction (towards personal expenses of deceased)	NIL	50% of ₹ 4970/- = ₹ 2485/-
6.	Dependency (Annual)	NIL	₹ 2485/- x 12 = ₹ 29820/-

7.	Compensation Awarded	NIL	₹ 29820/- x 18 = ₹ 5,36,760/-
8.	Loss of Consortium	NIL	NIL
9.	Loss of Estate	NIL	₹ 15,000/-
10.	Funeral Expenses	NIL	₹ 15,000/-
11.	Interest	NIL	7.5%
	TOTAL	NIL	**₹ 5,66,760 /-**

[10] Accordingly, in the light of position as noted above, the appeal is allowed. Award dated 02.09.2013 passed by the learned Tribunal is set aside and the appellant is held entitled to compensation of ₹ 5,66,760/- along with interest @ 7.5 % per annum with effect from the date of claim petition till date of payment.

[11] Needless to mention, the Insurance Company will make payment of the awarded amount after making deduction towards tax liability, if any, qua the future prospects payable in accordance with the decision in Pranay Sethi's case (supra).

(B.S. Walia)
Judge

27.08.2018
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.