IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3857-2014 (O&M)
Date of decision: 09.10.2018

NATIONAL INSURANCE COMPANY LTD .. Appellant

Versus

SURESH KUMAR AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.C. Kapoor, Advocate for the appellants.

Mr. Naveen Dahiya, Advocate for
Mr. Shalender Mohan, Advocate for respondents No.1 to 3.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 07.03.2014 passed by the Motor Accidents Claims Tribunal, Hisar whereby compensation has been assessed on account of death of Harender in a motor vehicular accident that took place on 03.12.2011.

Counsel for the insurance company would inform that appeal has been preferred to challenge quantum of compensation assessed qua death of Harender.

The Tribunal has awarded compensation of Rs.10,85,792/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5380/-
2. Multiplier	18
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.7,74,792/-
5. Expenses on funeral and transportation	Rs.11,000/-
6. Loss to estate	Rs.1,00,000/-
7. Loss of love and affection	Rs.2,00,000/- (Rs.1 lakh each)

The Tribunal has assessed income of the deceased @ Rs.5380/- per month on the basis of letter dated 21.11.1941 for the year 2011-12. As per the notification issued by the State of Haryana, minimum wage at the relevant time was Rs.4643.89 for an unskilled worker. The deceased was a student of 10+2 at the time of death. Taking a clue from the notification issued by the State of Haryana coupled with educational qualification of the deceased, income of the deceased is assessed at Rs.5000/- per month. Claimants shall be entitle to addition in income for future prospects @40%.

The application for compensation has been filed by the parents and minor sister of the deceased. The question for consideration is as to what should be the deduction for personal expenses where the deceased is a bachelor and claimants are his parents. In a recent judgment passed by Hon'ble the Supreme Court **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018**, the Court has affirmed deduction for personal expenses to the extent of 1/3rd with the observations that the deceased was living in a village where he was residing with his aged father who was about 65 years old and an unmarried sister considered to be dependents upon the deceased and made deduction of 1/3rd towards personal expenses of the deceased.

On the issue of deduction towards personal and living expenses in **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**, at paragraph 31, it was held, quoted thus:-

> 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 dependant 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.

A three judge bench of Hon'ble the Supreme Court in **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315** has affirmed deduction of 50% to be applied in the case of a bachelor unless a case for departure in the circumstances is made out. A relevant extract from paras 8 and 9 of the judgment, reads as follows:-

> 8. On the issue of deduction towards personal and living expenses in Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another[2], at paragraph-31, it was held that:
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> > 31. 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 dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father."
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> 9. The deduction ordinarily in the case of a bachelor at 50 % was approved recently by a three-Judge Bench decision in Reshma Kumari and others v. Madan Mohan and another[3], holding that the standard fixed in Sarla Verma (supra) on the aspect of deduction for personal and living expenses "must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out". Preceding paragraph-41 reads as follows:
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> > "41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to

the number of dependents."

Taking into consideration the enunciation in **Munna Lal Jain's case (supra)** decided by a three Judge bench and in absence of any special circumstances warranting deviation from the formula laid down in **Sarla Verma & Ors's case (supra)**, in my considered opinion, the appellant cannot be heard to say that deduction for personal expenses should be less than 50%. Further, siblings of the deceased are not entitle to compensation during lifetime of their father more particularly in the circumstances that there is nothing on record suggestive of the fact that their father has suffered any disability rendering him unable to earn livelihood for his family. Accordingly, deduction for personal expenses allowed by the Tribunal is modified and the same would be 50%. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,56,000/- [(Rs.5000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Magma General Insurance Co. Ltd.'s case (supra),** claimants No.1 and 2 shall be entitle to loss of consortium @ Rs.40,000/- each i.e. Rs.80,000/-, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss to estate.

Total compensation is Rs.8,66,000/- and compensation allowed by the Tribunal is reduced to the extent of Rs.2,19,792/- (10,85,792 – 8,66,000). The excess amount, if already paid by the insurance company may be recovered by filing an application before the Tribunal.

The appeal is disposed of in the aforesaid terms.

09.10.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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