IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3386-2015 (O&M)
Date of decision: 20.11.2018

Parkash Kaur and others .... Appellants

Versus

Manpreet Singh Suri and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Paul S.Saini, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No.4.

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Avneesh Jhingan, J.

The appeal has been filed against award dated 13.12.2013 passed by Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as the 'Tribunal') seeking enhancement of compensation.

The widow, two sons and a married daughter of deceased Pal Singh are the appellants. The driver of car bearing registration No.PB-11AS(T)-7474 (for brevity, 'the offending vehicle'), two owners and the insurer of the offending vehicle i.e. ICICI Lombard General Insurance Company Ltd. have been arrayed as respondents No.1 to 4 respectively in the present appeal.

The facts emanating from the record are that on 13.03.2012, Pal Singh along with Managar Singh was going to village Balpur on a motorcycle bearing registration No.PB-23-J-3365. Pal Singh was the pillion rider. When they reached near bus stand Rurki, the motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, both the occupants of the motorcycle fell down. Pal Singh was taken to Rajindra Hospital, from where, he was referred to PGI, Chandigarh, where he succumbed to injuries on 20.03.2012. FIR No.20 dated 20.03.2012 was registered at Police Station Mulepur, District Fatehgarh Sahib.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') was filed by the legal heirs of the deceased.

The Tribunal after considering the facts and on appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The insurer of the offending vehicle was held liable to pay the compensation. The Tribunal awarded a sum of ₹14,51,570/- along with interest @ 7.5% per annum. The amount awarded included ₹1,00,000/- for transportation of dead body, funeral expenses, last rites and bhog ceremony.

The deceased was working as a Deputy Inspector in the Agriculture Department, Fatehgarh Sahib. He was drawing a salary of ₹25,377/-. The Tribunal while awarding the compensation deducted the family pension of ₹13,000/- per month from the salary. 30% of the balance amount was deducted towards income tax payable. A multiplier of 13 was applied.

Heard learned counsel for the parties and perused the paper-book and record.

Learned counsel for the appellants argued that the Tribunal erred in deducting the family pension from the monthly salary of the deceased. His grievance is that 30% amount deducted towards income tax is on the higher side. He further contended that no future prospects have been awarded.

Learned counsel for the insurer argued that the income tax payable has to be deducted from the salary. She argued that no deduction for self expenses has been made. Her contention is that ₹1,00,000/-awarded for funeral expenses and transportation etc. is on the higher side.

The contention raised by learned counsel for the appellants deserves acceptance. The Tribunal erred in deducting the family pension from the monthly salary of the deceased.

The legal position with regard to the salary to be taken into consideration has been settled by the Hon'ble Apex Court in ***Manasvi Jain vs. Delhi Transport Corporation, (2014) 3 SCC 22*** and it has been held as under :-

> "*12. This Court in* ***Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378****, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc.,*

should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased."

As per the decision quoted above, it is only the gross salary minus income tax payable, if any, has to be considered in awarding compensation.

Keeping in view the rate of tax and the nil slab for the relevant assessment year, approximately ₹8,000/- would be the income tax payable after availing deductions. The same would be deducted while awarding the compensation.

Having due regard to the decision of Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., AIR 2017 SC 5157*** 30% future prospects are to be awarded as the deceased was 48 years of age at the time of the accident.

The deceased was survived by 2 to 3 dependents, 1/3rd deduction for self expenses has to be made in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121.*** Further, considering the age of the deceased, multiplier of 13 is applied.

The claimants shall be entitled to ₹15,000/-each for loss of estate and funeral expenses and ₹40,000/- is awarded for loss of consortium to the widow as per ***Pranay Sethi's case (supra).***

In view of the discussion above, the compensation is recalculated as under:-

It may be mentioned here that for the purpose of calculation, the monthly salary of the deceased is rounded off to ₹25,400/-.

Annual income (25400x12)	₹3,04,800/-
Less income tax	₹8,000/-
Total income	₹2,96,800/-
30% future prospects	₹89,040/-
Total	₹3,85,840/-
1/3rd deduction for self expenses	₹1,28,613/-
Dependency	₹2,57,227/-
Applying multiplier of 13	₹33,43,951/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium	₹40,000/-
Total	₹34,13,951/-

The award dated 13.12.2013 is modified to the extent that the amount of ₹14,51,570/- awarded by the Tribunal is enhanced to ₹34,13,951/-.

The claimants shall be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

20.11.2018
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1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No