**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-2370-2016 (O&M)
Date of decision: 19.11.2018

Mohinder Singh and others .... Appellants

Versus

Vidhya Nand @ Vidhya Nand Kumar and others ..... Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr.Vipul Sharma, Advocate for
Mr. Nitin Mittal, Advocate
for the appellants.

Mr.Ajay Singla, Advocate
for respondent No. 3.

****

**Avneesh Jhingan, J.**

The award dated 07.12.2015 passed by Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') has been assailed in this appeal.

The husband and two major sons of Reshmi Devi are the appellants. The driver of motorcycle bearing registration No.HR-01W-1193 (for brevity, 'offending vehicle'), owner and insurer of the offending vehicle i.e. IFFCO TOKIO General Insurance Company Limited, have been arrayed as respondents No.1 to 3 respectively in the present appeal.

ANJU
2018.11.22 15:58
I attest to the accuracy and
integrity of this document
phhc

The brief facts of the case are that on 07.05.2015, Reshmi Devi, aged 45 years, went to throw garbage, she crossed Saha-Shahzadpur Road and reached near *kacha* portion of the road, there she was hit by a rashly and negligently driven the offending vehicle. As a result of the accident, she suffered multiple injuries. She was taken to C.Lal hospital, Ambala Cantt., from there, she was referred to PGI, Chandigarh, where she succumbed to the injuries on 09.05.2015. FIR No.53 dated 10.05.2015 was registered at Police Station Saha.

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 was caused due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹7,17,000/- along with interest @ 7.5% per annum. The amount awarded included a sum of ₹20,000/- for transportation, funeral and last rites and ₹20,000/- for loss of consortium. A sum of ₹5,000/- was awarded for medical expenses incurred on the treatment.

The Tribunal assessed the notional income of the deceased as ₹4,000/- and applied a multiplier of 14.

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

Learned counsel for the appellants contended that the notional

ANJU
2018.11.22 15:58
I attest to the accuracy and integrity of this document
phhc

income of the deceased assessed by the Tribunal is on the lower side. His grievance is that the amounts awarded under the conventional heads are also on the lower side.

Learned counsel for the insurer defended the award and resisted any further enhancement.

The deceased, aged 45 years, was a house maker and was survived by husband and two major sons. Her role as a wife, a mother and a house maker cannot be under-estimated. It is very difficult to equate the contribution of a house maker in monetary terms.

The Hon'ble Apex Court in ***Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others, 2015 (4) SCC 237***, has held as under:

> *"Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A housewife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependancy."*

ANJU
2018.11.22 15:58
I attest to the accuracy and
integrity of this document
phhc

Keeping in view the age of the deceased, the minimum wages prevalent in the State of Haryana can be a yardstick to assess the notional income of the deceased. The minimum wages of an unskilled labouer at the time of accident in the State of Haryana was ₹5812/- per month. It is deemed appropriate that the notional income of the deceased is assessed as ₹6500/- per month. Since it is notional income assessed, hence, no deduction for self expenses is to be made.

This Court relying upon a decision of the Apex Court in case of ***Arun Kumar Aggarwal and another Versus National Insurance Company and others (2010-3) 159 PLR 428 (SC)*** in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others, Vol. CLXXII (2013-4) 329***, has held as under:

> *"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing*

ANJU
2018.11.22 15:58
I attest to the accuracy and integrity of this document
phhc

> *all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."*

In view of the decision quoted above, no deduction for self expenses is to be made. There is no dispute with regard to applying the multiplier of 14.

Having due regard to the decision of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157*** the claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate and ₹40,000/- is awarded for loss of consortium**.**

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

| | |
|---|---|
| Annual income | ₹78,000/- |
| Applying multiplier of 14 | ₹10,92,000/- |
| Funeral expenses | ₹15,000/- |
| Loss of estate | ₹15,000/- |
| Loss of consortium | ₹40,000/- |
| Medical expenses | ₹5,000/- |
| Total | ₹11,67,000/- |

The award dated 07.12.2015 is modified to the extent that the amount awarded by the Tribunal of ₹7,17,000/-is enhanced to ₹11,67,000/-.

The claimants shall be entitled to enhanced amount along with

ANJU
2018.11.22 15:58
I attest to the accuracy and
integrity of this document
phhc

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**

**19.11.2018**
anju

1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes

ANJU
2018.11.22 15:58
I attest to the accuracy and
integrity of this document
phhc