IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2802 of 2016 (O&M)
Date of decision: 24.09.2018

Anu Bala …… Appellant

Versus

Gaurav Aggarwal and others ….. Respondents

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

Present: Mr. Abhishek Sanghi, Advocate for
Mr. Rajesh Bansal, Advocate for the appellant.

Mr. Pankaj Mehta, Advocate for respondent No.3 – Insurance Company.

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B.S. WALIA, J. (ORAL)

CM No.10321-CII of 2016

For the reasons as are mentioned in the application, delay of 227 days in refiling of the appeal is condoned.

CM stands disposed of.

FAO No.2802 of 2016

[1] Mr. Pankaj Mehta, Advocate has put in appearance on behalf of respondent No.3-Insurance Company and has filed his Vakalatnama in Court today. The same is taken on record.

[2] Appeal has been filed by the wife of Dr. Ramandeep Singh (Homeopathic Doctor) who died in a motor vehicular accident on 16.08.2014. The learned Motor Accidents Claims Tribunal, Patiala (hereinafter referred to as "the Tribunal") by taking into account the age of the deceased as 30 years, income at ₹ 15,000/- per month and by making deduction of 1/3rd of the income of the deceased towards his personal

expenses, awarded compensation of ₹ 20,40,000/- on account of dependency. In addition thereto, a sum of ₹ 1,00,000/- was awarded on account of loss of consortium, ₹ 25,000/- for funeral expenses and ₹ 1,00,000/- towards loss of love and affection. In all, total compensation i.e. ₹ 22,65,000/- was awarded by the learned Tribunal.

[3] Learned counsel for the appellant contended that the income assessed by the learned Tribunal was on the lower side, besides, no amount had been awarded on account of future prospects, therefore, the appeal is liable to be accepted, award modified and compensation payable enhanced.

[4] Per contra, learned counsel for the respondent/Insurance Company contended that compensation had been awarded on the higher side and the same was liable to be reduced.Learned counsel contended that although the deceased was shown to be working as a Homeopathic doctor in Tapassvi Shri Faquir Chand Jain Homeopathic Dispensary run by S.S. Jain Sabha, Malerkotla against salary of ₹ 7500/- per month, yet he was earning ₹ 2300/- per month on account of services rendered on each Sunday from 9.00 a.m. to 12 a.m. in Homeopathic Charitable Dispensary being run by Gurmat Sewa Society (Registered). Besides, the Tribunal had assessed his earning from Manav Sewa Homeo Clinic at ₹ 5200 per month. Therefore, the income assessed was absolutely correct and did not warrant any interference.

Learned counsel further contended that no amount was liable to be paid on account of loss of love and affection nor was an amount more than ₹ 40,000/- liable to be paid on account of loss of consortium nor was a sum of more than ₹ 15,000/- liable to be paid towards funeral expenses and loss of estate respectively. Accordingly, a sum of ₹ 2,25,000/- awarded on account of conventional heads was liable to be scaled down to ₹ 70,000/-

[5] Learned counsel for the appellant contended that the income assessed by the learned Tribunal as earning from Manav Sewa Homeo Clinic was on the lower side for admittedly Register (Ex.P10) which had been proved in evidence revealed that there were approximately 20 patients each day being attended to in Manav Sewa Homeo Clinic from whom varying consultation charges/ cost of medicines ranging from ₹ 50/-, 60/-, 70/-, 80/-, 100/- and in some cases even ₹ 500/- were being charged. Learned counsel contended that although it is a well-known fact that Homeopathic doctors work throughout the month but assuming that four days a month were treated as off days, the number of days on which the clinic i.e. Manav Sewa Homeo Clinic was open would work out to 26 days.

[6] Learned counsel further contended that it had also come on record that no doubt the wife of the deceased was also a Homeopathic doctor and was also working with the deceased as a Homeopathic doctor in Manav Sewa Homeo Clinic but the deceased was only working in Tapassvi Shri Faquir Chand Jain Homeopathic Dispensary from 9.30 a.m. to 2.00 p.m. everyday and was working in Homeopathic Charitable Dispensary being run by Gurmat Sewa Society (Registered) on every Sunday from 9.00 a.m. to 12.00 noon and that for the rest of the days and time the deceased was attending to patients at Manav Sewa Homeo Clinic. Learned counsel further contended that approximately on an average 20 patients were being attended to everyday and if the average of ₹ 60/- per patient was taken as the fee, the same would work out to ₹ 1200/- per day and the same multiplied by 26 would work out to ₹ 31,200/-.

[7] Learned counsel for the appellant contended that even if assuming that the appellant i.e. wife of the deceased was also helping out at the Clinic as a Homeopathic doctor, the fact remained that the deceased was only working elsewhere till 2.00 p.m. everyday and for the rest of the day, he was attending to patients at Manav Sewa Homeo Clinic. Learned counsel further contended that it was a well-known fact that majority of the patients, be it in a Allopathic or a Homeopathic Clinic, visited the clinic post-evening though there would be sporadic patients during the day time also. In the circumstances, learned counsel contended that minimum of 50%, if not more, of the monthly earning from the clinic was liable to be treated as the income of the deceased. Approximately, a sum of ₹ 6000/- per month would be the cost of medicines being dispensed leaving approximately ₹ 21,000/- as the balance earning. If the same is divided equally amongst the deceased and his wife i.e. appellant, the monthly income of each would work out to approximately ₹ 10,500/- per month. Taking the fact that the wife (appellant) remained in the clinic for the entire day while the deceased husband used to come there only after 2.00 p.m., I feel that the share of the wife should be higher in the income. Accordingly, in the given set of circumstances the share of deceased's wife in the earning from the clinic would be higher than that of the deceased.

Accordingly, out of sum of ₹ 21,000/-, the wife would be entitled to 60% while her husband (deceased) would be entitled to 40% share in the earnings from the clinic. Accordingly, income of ₹ 21,000/- would be shared amongst wife as ₹ 12,600/- and husband as ₹ 8400/-.

[8] In the light of the position as noted above, as against sum of ₹ 5200/- taken into account by the learned Tribunal as income of the deceased

from Manav Sewa Homeo Clinic, the same is taken as ₹ 8400/- per month. Accordingly, the net monthly income of the deceased is taken at ₹ 7500/- + ₹ 2300/- + ₹ 8400/- (i.e. ₹ 18,200/-) as against sum of ₹ 15,000/- taken into account by the learned Tribunal.

[9] Likewise, as against ₹ 1,00,000/- awarded on account of loss of love and affection, ₹ 1,00,000/- on account of loss of consortium and ₹ 25,000/- towards funeral expenses and transportation charges, the appellants in terms of paragraph No.61 (viii) of the decision in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009** would be held entitled to award of compensation of ₹ 15,000/- on account of loss of estate and ₹ 15,000/- towards funeral expenses while the wife of the deceased would be entitled to ₹ 40,000/- on account of loss of consortium. No amount would be payable on account of loss of love and affection. Accordingly, as against the sum of ₹ 2,25,000/- awarded on account of conventional heads, the appellants would be held entitled to award of ₹ 70,000/-. Paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra) is reproduced as under:-

> *"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."*

[10] Admittedly, deceased was 30 years of age and was on a fixed salary on part time basis, besides was also self-employed. As per paragraph No.61 (iv) of the decision in Pranay Sethi (Supra), where the deceased was self-employed and less than 40 years of age, then in that eventuality 40% of the established income minus tax component is to be taken into account for

the purpose of computing future prospects. 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.*

Accordingly, in the light of the position as noted above, in the instant case, the appellant is held entitled to 40% of the established income of the deceased less tax component to be taken into account for computing future prospects.

[11] Since the date of birth of the deceased has come on record as 28.05.1984 and he died on 16.08.2014, he was more than 30 years of age. Accordingly, in terms of paragraph No.42 of the decision of Hon'ble the Supreme Court in **Sarla Verma v. Delhi Transport Corporation, 2009 ACJ 1298** multiplier of 16 would be applicable instead of 17. 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, in the light of the position as noted above, multiplier of 16 will be applicable instead of 17 while working out compensation payable on account of the deceased being more than 30 years of age at the time of his death.

[12] Learned counsel for the appellant further contended that rate of interest had been awarded @ 6% which was on the lower side. Hon'ble the Supreme Court in **Municipal Corporation of Delhi, Delhi v. Association of Victims of Uphaar Tragedy and others, 2011 (14) SCC 481** held that the amount awarded as compensation would carry interest at the rate of 9% per annum. Accordingly, in the instant case the appellant is held entitled to award of interest @ 9% per annum.

[13] 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	₹ 15,000/-	₹ 18200/-
2.	Future Prospects	NIL	40% of ₹ 18200/- = ₹ 7280/-
3.	Total Income assessed	₹ 15,000/-	(₹ 18200/- + ₹ 7280/-) = ₹ 25,480/-
4.	Multiplier applied	17	16
5.	Deduction (towards personal expenses of deceased)	1/3rd of ₹ 15,000/- = ₹ 5000/-	1/3rd of ₹ 25,480/- = ₹ 8493/-
6.	Dependency (Annual)	(₹ 15000/- - ₹ 5000/-) = ₹ 10,000/ (per month)	(₹ 25,480/- - ₹ 8493/-) = ₹ 16,987/- (per month)

		₹ 10,000/- x 12 = ₹ 1,20,000/-	₹ 16,987/- x 12 = ₹ 2,03,844/-
7.	Compensation Awarded	₹ 1,20,000/- x 17 = ₹ 20,40,000/-	₹ 2,03,844/- x 16 = ₹ 32,61,504/-
8.	Loss of Consortium	₹ 1,00,000/-	₹ 40,000/-
9.	Loss of Estate	NIL	₹ 15,000/-
10.	Funeral Expenses	₹ 25,000/-	₹ 15,000/-
11.	Loss of Love and Affection	₹ 1,00,000/-	NIL
12.	Interest	6%	9%
	TOTAL	**₹ 22,65,000/-**	**₹ 33,31,504/-**

[14] Accordingly, as against compensation of ₹ 22,65,000/- awarded by the Tribunal, the appellant-claimant is held entitled to compensation of ₹ 33,31,504/- along with interest @ 9 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier.

[15] Needless to mention, mode of payment of compensation shall be as per the award, but after first deducting the tax liability if any qua the future prospects payable in accordance with the decision in Pranay Sethi's case (supra).

[16] Accordingly, appeal is allowed by modifying Award dated 07.02.2015 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

24.09.2018
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.