

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-3832-2015 (O&M)
Judgement reserved on 20.08.2018
Date of Decision: 14.11.2018

P.R.T.C

--Appellant

Versus

P.Shanmuga Raja Nadar @ Shanmuga
Raja P and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Anupam Singla, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondents no.1 to 3.

TEJINDER SINGH DHINDSA.J

CM-11742-CII-2015

In view of the averments made in the application, sufficient cause has been shown to condone delay of 67 days that has occurred in filing the instant appeal.

Prayer is allowed.

Delay is condoned.

Main Appeal

The Pepsu Road Transport Corporation has filed the instant appeal assailing the award dated 31.10.2014 passed by the M.A.C.T., S.A.S. Nagar, Mohali and whereby a compensation amount of Rs.22,46,428/- has been awarded in favour of the claimants/respondents no.1 to 3 herein.

Counsel for the appellant-Corporation has at the very outset confined the scope of the instant appeal as regards quantum of compensation.

Brief facts may be noticed at the threshold. A claim petition was filed under Section 166 of the Motor Vehicle Act seeking compensation

to the tune of Rs.1 crore on account of death of Ashoka S.R @ Ashoka Karnaga Balan Nadar who is stated to have died in an accident on 14.8.2013. Claimants were the husband and two minor children of the deceased. It was asserted that on the fateful day at about 1.45 P.M deceased was pillion riding on a Honda Activa scooter being driven by her husband and while they were on the Zirakpur-Patiala Road, a P.R.T.C bus bearing registration no. PB-03R-9961 came at a fast speed and being driven in a rash and negligent manner, struck against the right side of the scooter. As a result of the accident deceased fell towards her right side and her right leg was crushed by the rear wheel of the offending vehicle and she was dragged to a distance of 10 yards. Deceased was initially taken to G.M.C.H Sector 32, Chandigarh and thereafter was referred to P.G.I., Chandigarh. Her leg was amputated on 17.8.2013 but she succumbed to the injuries sustained in the accident on 21.8.2013. Claimants had asserted that deceased Ashoka S.R @ Ashoka Karnaga Balan Nadar had completed her B.Com and was pursuing M.Ed from Vidya Jyoti Education Society, Derabassi. She was the Director-cum-Owner of Star Light Bar Academy, S.C.O, 66, Royal Estate, Zirakpur and was earning an amount of Rs.1 lakh per month. It was further asserted in the claim petition that deceased was paying a monthly rent of Rs.9500/- in respect of the premises in which the Academy was being run and was also paying rent @ Rs.8,000/- per month for the residential accommodation.

The claim petition having been contested, Tribunal recorded a finding in favour of the claimants as regards rash and negligent driving at the hands of Satnam Singh, driver of the offending bus and that the death of Ashoka S.R had occurred in the accident involving the offending bus. Such

findings are not under challenge in the instant appeal preferred by the P.R.T.C i.e. the owner of the offending bus.

In so far as compensation amount is concerned, the same was computed by the Tribunal as Rs.22,46,428/- and were calculated as follows:-

Sr. No.	Heads	Calculation
i)	Assessed monthly income	Rs.10,000/- P.M.
ii)	50% (i) above to be increased in the name of future prospects	Rs.10,000+Rs.5,000= Rs.15,000/-
iii)	1/3 rd of (ii) above deducted as personal expenses of deceased	Rs.15,000-Rs.5,000= Rs.10,000/-
iv)	Compensation after multiplier of '16' is applied	Rs.10,000x12x16= Rs.19,20,000/-
v)	Loss of love and affection of mother and security to claimants no.2 and 3	Rs.1,00, 000/- (i.e. Rs.50,000/- each)
vi)	Loss of consortium to claimant no.1	Rs.1,00,000/-
vii)	Medical Expenses	Rs.1,01,428/-
viii)	Funeral expenses	Rs.25,000/-
	Total compensation awarded	Rs.22,46,428/-

Counsel representing the appellant-Corporation has argued that the compensation amount awarded is on the higher side. Since deceased was 33 years old at the time of accident and was self employed, an addition in income towards future prospects ought to have been granted @ 40% instead of 50%. Reliance was placed by counsel on the judgement of the Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil), 1009* to contend that a total sum of Rs.70,000/- ought to have been awarded under the conventional heads i.e. loss of consortium, loss of estate and funeral expenses, whereas the Tribunal has awarded a sum of Rs.2,25,000/- under the conventional heads. Mr. Anupam Singla learned counsel has during the course of hearing furnished a calculation to contend that the compensation amount by following the parameters laid down in *Smt. Sarla Verma and others Vs. Delhi Transport*

Corporation & another, 2009 (3) R.C.R (Civil), 77 as also **Pranay Sethi's** case (supra) ought to be Rs.19,50,000/- approximately instead of Rs.22,46,428/- that has been awarded by the Tribunal.

Per contra, Mr. Ashwani Arora learned counsel representing the claimants/respondents no.1 to 3 has contended that rather it is a case for enhancement of compensation. In support of such submission, it is stated that the Tribunal has completely overlooked the contribution of a housewife/mother and which had also to be assessed in monetary terms and added to the monthly income of Rs.10,000/- that has been assessed by the Tribunal on account of her running an Academy. It is urged that in the case of **Lata Wadhwa and others Vs. State of Bihar and others, 2001(8) S.c.C, 197**, the monthly income of the deceased who was a housewife had been assessed as Rs.3,000/- in relation to an accident that had taken place in the year 1981, Mr. Arora would vehemently argue that since accident in the facts of the instant case had taken place in the year 2013, it would be a fit case to assess in monetary terms the role of the deceased as a housewife/mother as Rs.6,000/- per month.

Counsel for the parties have been heard at length.

Even though, Mr. Anupam Singla learned counsel for the appellant-Corporation has contended that there would be no scope for enhancement of compensation as no appeal/cross-objections have been filed by the claimants seeking enhancement of compensation, yet, in the considered view of this Court the claimants can certainly defend the quantum of compensation awarded by the Tribunal by pointing out any error or omission in the award, which, if, taken note of would lead to a conclusion that there is no requirement to reduce the amount awarded as compensation.

Undoubtedly, the claimants herein (respondents no.1 to 3) have not challenged the award of the Tribunal as they ostensibly were not aggrieved of the compensation amount of Rs.22,46,428/- that was awarded by the Tribunal. Be that as it may, merely on account of the fact that the claimants have not independently challenged the award will not come in their way of defending the compensation awarded, on other grounds. Such proposition is founded as per provisions contained in Order 41 Rule 33 of the Code of Civil Procedure and which enables an appellate court to pass any order which ought to have been passed by the Trial Court and to make such further or other order as the case may require, even if, the respondents had not filed any appeal or cross-objections. In this regard a reference may be made to the decision of the Apex Court in ***Ranjana Prakash and others Vs. Divisional Manager and Anr., 2011(4) R.C.R (Civil), 218***, and wherein it was held as follows:-

“6. We are of the view that High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of future prospects and add 30% to the annual income of the deceased. But the claimants were not aggrieved by Rs.23,134/- being taken as the monthly income. There was therefore no need for them to challenge the award of the Tribunal. But where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a

contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.

7. *This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.*

8. *Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High*

Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.”

Adverting back to the facts of the present case, the submissions advanced by counsel representing the appellant-Corporation are certainly meritorious. The Tribunal while computing the compensation amount has awarded an addition in income towards future prospects of the deceased @ 50%. Since deceased was 33 years at the time of accident and was self employed as per case projected by the claimants, a 40% increase towards future prospects ought to have been awarded by following the parameters in ***Pranay Sethi's*** case (supra). Even the amount of Rs.2,25,000/- awarded under the conventional heads is on the excessive side and Rs.70,000/- ought to have been awarded towards loss of consortium, loss of estate and funeral expenses etc.

On the other hand, counsel for the claimants/respondents no.1 to 3 has also pointed out a glaring omission on the part of the Tribunal. The monthly income of the deceased has been assessed as Rs.10,000/- while considering that she was running an Academy and had also adduced evidence reflecting payment of rent for the premises in which the Academy was being run. Tribunal has not assessed in monetary terms the role that the deceased was discharging in the capacity of a housewife/mother. The

Kishore Behera and Ors., 2018(1) R.C.R (Civil), 719 had taken the income of the deceased i.e. a lady labourer from agricultural labour work @ Rs.3,000/- per month and added a sum of Rs.1500/- per month towards household work and accordingly assessed the monthly income @ Rs.4500/- per month. In the present case even if this Court was to be guided by the judgement of the Apex Court in **Lata Wadhwa's** case (supra) an amount of Rs.3,000/- per month at the very least would require to be added to the monthly income of Rs.10,000/- that already stands assessed by the Tribunal. As such, if the total income is taken as Rs.13,000/- per month instead of Rs.10,000/- and by applying the parameters as suggested and put forth by counsel for the appellant-Corporation the compensation amount arrived at would be Rs.24 lakhs approximately. A calculation in this regard would then be as follows:-

Sr. No.	Head	Amount
1	Monthly income (as assessed by the Tribunal)	Rs.10,000/-
2	Addition in income towards role of housewife/mother.	Rs.3,000/- per month
3	Total monthly income	Rs.13,000/-
4	40% addition in income towards future prospects.	Rs.5200/- 13,000+5200=18,200/-
5	1/3 rd deduction towards personal and living expenses of the deceased.	6066/- 18,200-6066=12,134/-
6	Amount after applying multiplier of 16	12,134x12x16=23,29,728/-
7	Conventional heads i.e. loss of consortium, loss of estate and funeral expenses etc.	70,000/-
8	Total compensation amount	23,29,728+70,000= Rs.23,99,728/-

The Apex Court in **Ranjana Prakash's** case (supra) had held that where an appeal is filed challenging the quantum of compensation, irrespective of who files an appeal, the appropriate course for the High Court is to examine the facts by applying the relevant principles, determine

the just compensation and if compensation determined is higher, then, the compensation awarded by the Tribunal the High Court shall allow the appeal, if, it is by the claimants and dismiss the appeal, if, it is by the owner/insurer.

By following the dictum laid down in *Ranjana Prakash's* case (supra) since the appeal has been preferred by the owner of the offending vehicle and the compensation amount determined by this Court is higher than the amount awarded by the Tribunal, there would be no scope of reduction of the compensation amount and the appeal consequently is dismissed.

The compensation amount awarded by the Tribunal vide award dated 31.10.2014, is affirmed.

Appeal is dismissed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

14.11.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No