IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3381 of 2016 (O&M)
Date of Decision :27.07.2018

Kavita and others **....Appellants**

VERSUS

Kuldeep Singh and others **...Respondents**

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

Present: Mr. Amit Khatkar, Advocate for the appellants.

Mr. Vikram Lakhlan, Advocate for respondent Nos.1 and 2.

Mr. Sukhdarshan Singh, Advocate for respondent No.3.

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B.S. WALIA, JUDGE (ORAL).

1. Prayer is for enhancement of compensation awarded by the learned Motor Accident Claim Tribunal Hisar (hereinafter referred to as 'the Tribunal') on account of death of Mukesh Kumar, husband of appellant No.1, father of minor appellant Nos.2 to 4 and son of appellant No.5.

2. The Tribunal by taking into account the income of the deceased at ₹7260/- per month as per the Minimum Wages Act, 1948 assessed the annual income of the deceased at ₹87,120/- and by imposing a cut of 1/3rd in the salary of the deceased towards his personal expenses, assessed monthly dependency at ₹4840/- and annual dependency at ₹58,080/-. Thereafter by applying multiplier of 17, dependency was worked out at ₹9,87,360/-. Further by adding ₹20,000/- on

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account of transportation and funeral expenses, ₹1,00,000/- on account of loss of consortium, total compensation of ₹11,07,300/- was awarded.

3. Sole argument of learned counsel for the appellants is that no amount was awarded on account of future prospects.

4. Learned counsel for the respondent-Insurance Company, fairly conceded the claim for award of future prospects. He, however, contended that the amount awarded on account of transportation and funeral expenses could not exceed ₹15,000/- and that too for funeral expenses. Likewise, sum awarded on account of loss of consortium could not exceed ₹40,000/-

5. I have considered the submissions of learned counsel for the parties.

6. Paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others-2017(4) RCR (Civil) 1009** deals with award of future prospects. Relevant extract of the aforementioned decision 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, since the deceased was less than 40 years of age, on fixed salary of ₹7260/- per month, therefore, the appellants are entitled to addition of 40% of the established income of the deceased less tax for computation of future prospects.

7. The appellants were awarded ₹1,20,000/- on account of conventional heads i.e. ₹20,000/- on account of transportation and funeral expenses and

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₹1,00,000/- on account of loss of consortium. Paragraph No.61(viii) of the decision in **Pranay Sethi's case** (supra) lays down the amount payable qua conventional heads. Relevant extract of the aforementioned decision 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."*

Accordingly, the appellants are held entitled to ₹15,000/- each on account of loss of estate and funeral expenses, besides, widow is held entitled to ₹40,000/- on account of loss of consortium.

8. Lastly, cut of 1/3rd of the salary of the deceased was imposed towards his personal expenses. However, as per paragraph No.30 of the decision of Hon'ble the Supreme Court in **'Sarla Verma vs. Delhi Transport Corporation', 2009 ACJ 1298,** as upheld in **Pranay Sethi's** case (supra), where the number of dependents is 4 to 6, deduction is to be made @ 1/4th of the income of the deceased. Paragraph No.30 of the decision in **Sarla Verma's** case (supra) is reproduced as under:

> "*30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra4, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this 37 (2003) 3 SLR (R) 601 31 Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."*

Since the deceased left behind 5 dependents, therefore, deduction qua

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personal expenses of the deceased is ordered to be made @ 1/4th of the income of the deceased.

9. Accordingly, in the light of the position as noted above, the award is modified and the compensation enhanced as under:

Sr. No.	Head	Amount assessed by Tribunal in ₹	Amount assessed by this Court in ₹
1	Income	7260/-	7260/-
2	Future prospects	NIL	@ 40%= 2904
3	Total income assessed	7260/-	10,164/-
4	Deduction towards personal expenses of deceased.	1/3rd of total income =2420/-	1/4th of total income =2541
5	Dependency arrived at	4840/-	7623/-
6	Multiplier applied	17	17
7	Compensation awarded	4840x12x17 = 9,87,360/-	7623x12x17 = 15,55,092/-
8	Loss of consortium	1,00,000/-	40,000/-
9	Transportation and Funeral expenses	20,000/-	15,000/-(funeral expenses only)
10.	Loss of Estate	Nil/-	15,000/-
	Total	**11,07,360/-**	**16, 25,092/-**

10. Accordingly, in the light of the position as noted above, the appellants are held entitled to compensation of ₹16,25,092/- along with interest @ 7.5% per annum with effect from the date of claim petition till date of payment less amount, if any, already paid.

11. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares after first making payment of ₹40,000/- towards loss of consortium to the widow of the deceased. Insurance Company shall make payment of compensation after deducting tax liability qua the future prospects in accordance with the decision in **Pranay Sethi's** case (supra).

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12. Accordingly, appeal is allowed. Award dated 09.02.2016 passed by the learned MACT, Hisar is modified to the extent as noted above.

(B.S. WALIA)
JUDGE

July 27, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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