

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

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FAO No. 4343 of 2016 (O & M)
Date of Decision:30.01.2018

Nisha Rani Chhura and another

...Appellants

Versus

Rama Ahuja and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajeshwar Singh, Advocate
for the appellants.

Mr.Varun Sharma, Advocate for
Mr. A. Talwar, Advocate
for respondent No.2.

ANIL KSHETARPAL, J.(Oral)

CM No.14920-CII-2016

Application is for permission to lead additional evidence so as to place on file disability certificate and record of his treatment with respect to appellant No.2. Disability certificate is issued by Medical Board of Doctors, from Government Medical College and Hospital, Sector 32, Chandigarh. Appellant also wants to place on record copy of the treatment chart. No reply to the application has been filed.

Keeping in view the fact that correctness of the disability certificate, issued by the Board of Doctors, Government Medical College, Sector 32, Chandigarh had not been disputed, the application is allowed and documents are taken on record.

Learned counsel for the respondents was offered opportunity to lead counter evidence, however, learned counsel for the respondents submitted that no counter evidence is required.

Main Case

Claimants-appellants are in the appeal for enhancement of the compensation. Late Sh. Hussan Lal, a retired Chief Engineer from Irrigation Department, Government of Punjab died in a Motor Vehicular Accident on 26.01.2015. Accident took place on 23.01.2015. It was the case of the claimants that after retirement, late Sh. Hussan Lal was working as a Cluster Head of M/s Gurinder Singh Contractor and getting Rs.2,00,000/- per month as salary. It was further pleaded that Sh. Hussan Lal was getting Rs.75,000/- per month as pension.

Learned trial Court after examining the evidence held that Sh. Hussan Lal was getting pension of Rs.65,880/- per month out of which Rs.13,076/- were commuted and thus total payable was Rs.52,804/-.

The Tribunal are also held that late Sh. Hussan Lal was 62 years of age at the time of accident. Learned Motor Accident Claims Tribunal after examining the evidence also recorded a finding of fact that no evidence has been produced on file to prove that late Sh. Hussan Lal was re-employed and was getting salary of Rs.2,00,000/- per month from M/s Gurinder Singh Contractor. The Court discussed the evidence of the proprietor of the firm i.e. Gurinder Singh but found to be unreliable.

However, learned Motor Accident Claims Tribunal worked out the dependency by imposing a 50% cut assuming that appellant No.2, who is the major son, cannot be held to be dependent. The Court applied a multiplier by taking the age of the deceased as 62.

In view of the disability certificate, which has been produced before this Court by way of additional evidence, the finding of the learned Motor Accident Claims Tribunal that major son was not dependent cannot be

sustained.

Likhith Chhura-appellant No.2 is suffering from mental illness and disabled to the extent of 71% to 99% and categorized as severe. Therefore, the finding of the learned Motor Accident Claims Tribunal that appellant No.2 was not dependent on his father is found erroneous.

In view thereof, the dependency has to be worked out by imposing a cut of $\frac{1}{3}^{\text{rd}}$. Thus, the dependency comes to Rs.35,204/- ($52,804 \times \frac{2}{3}$).

It is not disputed that as per the judgment of the Hon'ble Supreme Court in Sarla Verma's case, in the case of a deceased aged 62 years, multiplier of 7 is to be applied. Hence, the multiplier applied by the Court is revised to 7.

Learned counsel for the appellant has very vehemently argued that learned Motor Accident Claims Tribunal has wrongly ignored the evidence of Gurinder Singh, who has appeared in the witness-box and has stated that late Sh. Hussan Lal was drawing salary of Rs.2,00,000/-. However, Gurinder Singh Contractor when appeared in the witness-box did not produce any evidence proving that he was paying any salary to Sh. Hussan Lal. Income Tax Return produced on file is after the death of Sh. Hussan Lal. It is the case of the appellants that Late Sh. Hussan Lal came to join the service on 01.05.2014, however, no record has been produced on file to establish such fact.

In view of the aforesaid discussion, the appeal is allowed. The compensation awarded by the Court as regards multiplier and working out dependency is revised. However, under the conventional heads, appellants have been granted Rs.1,75,000/- which can at the most be Rs.70,000/- as per the judgment of Constitution Bench **“National Insurance Company Limited vs. Pranay Sethi and others” JT 2017 (10) SC 450.**

is to be deducted from the amount while working out the dependency. He has referred to the para 61 of the judgment in Pranay Sethi (supra).

This Court has considered the submission.

In the considered opinion of this Court, the income tax deduction is with reference to the future prospectus.

The compensation payable to the appellants shall be as under:

Heads	Compensation awarded by High Court	Compensation awarded by MACT
Income	65,880/-	65,880/-
Commuted	(minus)13,076/-	(minus)13,076/-
	52,804/-	52,804/-
Annual Income	52,804 X 12= 6,33,648/-	52,804 X 12= 6,33,648/-
Income tax *		NIL
*Ist 3,00,000/- exempted from tax	NIL	
	6,33,648/-	
* on next 2,00,000/- (5 % tax)	10,000/-	
* on next 1,33,648/- (20% tax)	26,729.6/-	
After tax income	5,96,919/-	
(-) Deduction	(1/3 rd) (-) 1,98,973/-	(-) (50%) 3,16,824/-
	3,97,946/-	3,16,824
Multiplier Age = 62 years	3,97,946 x 7 = 27,85,622/-	3,16,824 x 5= 15,84,120/-
+ Medical Expenses	NIL	17,426/-
+Loss of Consortium	40,000/-	1,00,000/-
+Loss of Love and Affection	NIL	50,000/-
+Funeral Expenses	15,000/-	25,000/-
+Loss of Estate	15,000/-	NIL
	28,55,622/-	17,76,546/-
(-) Already awarded by MACT	(-) 17,76,546/-	
Enhanced Compensation	= 10,79,076/-	

Enhanced compensation of Rs.10,79,076/- shall be payable along with interest @ 6% per annum from the date of filing of the claim petition till realization.

Hence, the appeal is allowed.

30.01.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No