

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

**FAO-3382-2001 (O&M)
Date of decision : 12.7.2019**

Veena Aneja & others

.....Appellants.

Versus

Raj Kumar and others

..... Respondents.

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K. Bashamboo, Advocate for the appellants.

Mr. Deepak Suri, Advocate for Insurance Company.

KULDIP SINGH, J.

Veena Aneja- deceased, now through her legal heirs, has filed the present appeal for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal) vide award dated 2.8.2000.

Facts of the case are that Veena Aneja, aged about 44 years, who was working in Command Hospital, Chandimandir, after performing her duties was coming back on her scooter No. CH-01-S-0789 on 5.1.1996. At about 3.45 p.m., when she crossed the railway lights point and was approaching Chandigarh, respondent No. 1-Raj Kumar came from behind driving Maruti Van bearing registration No. PB-37-1707 rashly and negligently and struck against her scooter. As a result of the said accident, Veena Aneja fell down and received multiple injuries including head injury.

She was removed to PGI Chandigarh where she remained admitted from

5.1.1996 to 2.6.1996. She was operated upon four times. She slipped into vegetative state. She was declared 100% disabled by the doctors. She was unable to eat, drink, hear, talk or understand anything. She had no movement in her limbs and could not answer the call of nature. Two attendants were employed around the clock to take care of her.

Appellant-Veena Aneja was working as Personal Assistant to the Deputy Commandant under the Union of India. Her salary was Rs. 5899/-. On the basis of the said accident, FIR No. 4 of 1996 was registered at Police Station Manimajra, U.T. Chandigarh under Sections 279/337/338 of the Indian Penal Code on the basis of statement of Gulab Singh-constable.

It further comes out that after the decision of the claim petition on 2.8.2000 and during the pendency of present appeal, Veena Aneja who was in vegetative state, expired on 9.1.2005.

Before the Tribunal, Veena Aneja filed the claim petition through her husband-J.K. Aneja for grant of compensation. Second petition was filed by her husband-J.K. Aneja claiming compensation, appeal of which will be decided separately.

Respondent No. 1-Raj Kumar in the reply denied that the accident took place due to his rash and negligent driving. It was stated that the expenditure shown is excessive. Vehicle was insured with respondent No. 3-Insurance Company. The entitlement for the compensation was also denied. Respondent No.1 claimed that he was driving Maruti Van at slow speed. When he reached near the railway lights point crossing for going to

Chandigarh, traffic lights were green. His vehicle was in process of crossing the traffic lights when Veena Aneja came on the scooter rashly and negligently from behind and in the process of over taking the maruti van, she hit the scooter on the left side of the van. Respondent No. 2 also raised the similar plea. Respondent No. 3-Insurance Company denied the accident and took the usual plea.

From the pleadings following issues have been framed: -

1. Whether claimant received injuries in a motor vehicle accident on 5.1.1996 due to rash and negligent driving of Maruti Van No. PB-37-1707?OPP.
2. If issue No. 1 is proved, whether claimant is entitled for compensation? If so, how much and from whom? OPP.
3. Whether claim petition is bad due to non-joinder of necessary parties? OPR.
4. Whether respondent No. 1 was not having a valid driving licence at the time of accident? If so, to what effect? OPR-3.
5. Relief.

The Tribunal held that Veena Aneja received injuries due to rash and negligent driving of the offending maruti van and decided issue No. 1 in favour of the appellant. While deciding issue No. 2, the Tribunal while considering 100% disability; the salary of the deceased-appellant Veena Aneja to be Rs. 6820/- and her pension Rs. 2314/-, awarded the compensation under the following heads: -

- | | | |
|----|---------------------------|----------------|
| 1. | Pain and sufferings | Rs. 50,000/- |
| 2. | Loss of Income | Rs. 7,57,008/- |
| 3. | Un-imbursed medical claim | Rs. 90,236/- |
| 4. | Special Diet | Rs. 15,000/- |

5. Employment of two helpers Rs. 1,00,000/-

6. Transportation charges Rs. 5,000/-

Hence, the total compensation was awarded to the tune of Rs. 10,17,244/-. In the claim petition, J.K. Aneja-husband of the appellant was awarded Rs. 30,000/- for loss of love and affection.

Claimant-appellant-Veena Aneja filed the present appeal in the year 2001. In the meanwhile on 9.1.2005, Veena Aneja died while she was in vegetative state. This Court vide order dated 2.8.2017 called for the report of Director, PGI, Chandigarh and the Medical Superintendent, PGI, Chandigarh regarding the medical history of Veena Aneja and as to what is meant by '*vegetative state*' and '*whether death in this case has any causal connection with the accident*'. Report dated 14.9.2017 has been received.

I have heard learned counsel for the parties and have carefully gone through the case file.

I will take up the claim one by one, as pressed by learned counsel for the parties.

Learned counsel for the appellants has vehemently argued that for loss of income, pension could not have been deducted by the Tribunal, as has been done. Therefore, claimant-appellant Veena Aneja is entitled to compensation on the full salary of Rs. 6820/-. Since the claimant-appellant is dead and now the case is being decided as a death case, therefore, I am of the view that pension could not be deducted from the income. As such, the income of the deceased is taken to be as Rs. 6820/-. Considering the age of the appellant i.e. 44 years of age, 30% is added for future prospectus, in

view of law laid down by a Constitution Bench of the Hon'ble Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and others***, 2017 (4) RCR (Civil) 1009. Hence, total income of the deceased comes to Rs. 8866/-. 1/3rd i.e. Rs. 2955/- are deducted as personal expenses. The dependency of family comes to Rs. 5911/- (8866-2955). Considering the fact that from the date of accident till her death, she remained in vegetative state without any movement and also the fact that she was unable to speak, eat or move, the multiplier as per the age at the time of accident is to be applied which should be 14 as per the law laid down by Hon'ble Supreme Court in ***Sarla Verma & Ors vs Delhi Transport Corp.& Anr***, (2009) 6 SCC 121. The amount of compensation comes to 5911 x 12 x 14 i.e. Rs. 9,93,048/-.

Learned counsel for the claimant-appellant has also pressed for claim on the account of permanent disability which remained in effect from the date of accident till death i.e. 5.1.1996 to 9.1.2005.

I am of the view that since from the date of accident, the multiplier is being applied, considering it to be as good as a death case, therefore, separately, no compensation on account of permanent disability can be awarded from 5.1.1996 to 9.1.2005.

Learned counsel for the claimant-appellant has contended that the deceased remained in PGI, Chandigarh from 5.1.1996 to 2.6.1996 and thereafter, she was removed to home in vegetative state. She was a woman and therefore, two attendants had to be employed i.e. one male and one female. In this regard, claimant-appellant has examined the said attendants

namely Ganesh Bahadur (PW-7) and Nisha (PW-8). Ganesh Bahadur (PW-7) had stated that he was initially paid Rs. 1700/- per month and now he is being paid Rs. 2400/- per month. He had brought his passbook and perused the photocopy i.e. Ex. P-6. He also produced the diary entries of which are Ex. P-10 to P-12. Nisha (PW-8) stated that she was employed in January 1998 and was being paid Rs. 2000/- per month to look after the injured lady as she was in comma and could not change her clothes, wash her clothes and to help her in performing her nature calls. Besides, she was also used to get clothes and food etc. Claimant-J.K. Aneja had also stated that he was paying the salary to both the attendants i.e. Ganesh Bahadur and Nisha and produced the passbooks for the said purpose. The Tribunal awarded consolidated amount of Rs. 1.00 lac for the same.

I am of the view that considering the fact that claimant-appellant Veena Aneja remained in vegetative state, she was required to be looked after by two persons constantly to help her. Since she was a female, services of female were also required to look after her. Therefore, there is no ground to disbelieve the statement of Ganesh Bahadur (PW-7) and Nisha (PW-8) and that they were being paid the salary as claimed in the petition. As such salary to Ganesh Bahadur from January 1996 to May 1999 @ Rs. 1500/- and from June 1999 to January 2005 @ Rs. 2040/- per month as claimed by J.K. Aneja are allowed, which comes to Rs. 2,22,300/- The salary of Nisha from January 1998 to January 2005 @ Rs. 2,000/- is allowed which comes to Rs. 1,68,000/-. Hence, the total amount comes to Rs. 3,90,300/-. For the un-imbursed medical expenses, an amount of Rs.

90,236/- has already been allowed and the same is affirmed. For the special diet, the Tribunal had allowed Rs. 15,000/-. The claimant-appellant remained in vegetative state from 5.1.1996 to 9.1.2005. The statement of Dr. M.K. Tewari, Assistant Professor Department of Neurosurgery, PGI, Chandigarh (PW-9) shows that the claimant-appellant had suffered permanent disability to the extent of 100%. She was in vegetative stage. The extract from the report of the Director, PGI Chandigarh dated 14.9.2017 regarding the vegetative state of claimant-appellant is reproduced below:-

“As regarding the term “persistent vegetative state” it was coined by Jennett and Plum in 1972 to describe the condition of patients with severe brain damage in whom coma has progressed to a state of wakefulness without detectable awareness. Such patients have sleep-wake cycles but no ascertainable cerebral cortical function. Jennett and plum thought that patients in a persistent vegetative state could be distinguished clinically from those with other conditions associated with prolonged unconsciousness. Reference is enclosed (Special article Medical aspects of the Persistent Vegetative State- The Multi Society Task Force on PVS, N. Engl J. Med. 1994;330:1499-1508, May 26, 1994 (Annexure -3)”.

It goes to show that though clinically, claimant-appellant was alive but for other practical purposes, she was virtually as good as dead. She was on liquid diet from 5.1.1996 to 9.1.2005, i.e. for 9 years. The claim petition was decided by the Tribunal in the year 2000. Therefore, the expenses on the special diet are to be calculated till her death. On account of special diet for 9 years, I am of the view that a consolidated amount of Rs. 1.00 lac for special diet will meet the ends of justice and the same are accordingly allowed. Under the conventional heads i.e., loss of consortium,

loss of estate and funeral expenses Rs. 70,000/- are allowed in view of law

laid down in *Pranay Sethi's case (supra)*. As per the law laid down by Hon'ble Supreme Court in *Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018/ (4) RCR (Civil) 333*, Rs. 40,000/- are allowed to each of the two children of Veena Aneja-claimant-appellant which comes to Rs. 80,000/- Hence the total sum comes to Rs. 1,50,000/-

Learned counsel for claimant-appellant has argued that after the filing of the claim petition i.e. on 23.5.1997 till the death of the deceased on 9.1.2005, claimant-appellant had to pay medical expenses. She was repeatedly taken to PGI, Chandigarh for treatment. Unluckily, the medical receipts regarding the medicines and transportation are not available. Considering that the patient was in vegetative state who must be taking some medicines daily to keep herself clinically alive, therefore, Rs. 3,000/- per month on account of medicines are allowed from 2.8.2000 till January 2005 i.e., 52 months. Hence the total amount comes to Rs. 1,56,000/- for medical expenses and Rs. 5,000/- as awarded by the Tribunal for transportation are also allowed.

Learned counsel for claimant-appellant further argues that the husband and two minor daughters of the deceased were also rendering services to the claimant-appellant till her death, therefore, they are also entitled for separate compensation. I am of the view that no separate compensation under this head is to be allowed. The expenses of two attendants have been allowed. In the routine also, one is to look after other family members. The additional medical expenses have also been allowed.

Therefore, there is no question to allow compensation under this head.

Hence, the findings of the Tribunal on issue No. 2 are accordingly modified. No arguments were addressed on the remaining issues.

In view of the foregoing discussions, appeal is allowed, the compensation is enhanced from Rs. 10,17,244/- to Rs. 18,84,584/-. The enhanced compensation shall be paid by respondent No. 3-Insurance Company with interest @ 7.5% per annum from the date of filing of the claim petition till realization. Out of the amount of compensation of Rs. 18,84,584/-, a sum of Rs. 2.00 lac each shall be given to daughters of the deceased and the remaining amount shall be given to the husband of the deceased-Veena Aneja who is now to run the family; educate the daughters; marry them and look after them even after their marriage.

Appeal stands allowed accordingly.

(KULDIP SINGH)
JUDGE

12.7.2019
preeti

Whether speaking / reasoned
Whether Reportable:

Yes
Yes