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

FAO No.2238 of 2001
Date of Decision: 21.02.2019.

National Insurance Company Ltd. and others. ...Appellants

Versus

Pushpa Devi and others. ....Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. Neeraj Khanna, Advocate for the appellant.
Ms. Monika Jhangra, Amicus Curiae,
for respondent Nos.1 to 5.

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<u>B.S.Walia, J (Oral)</u>.,

1. Appeal has been filed by the Insurance Company, owner and driver of the offending vehicle challenging the compensation of ₹2,60,000/- awarded by the learned Motor Accidents Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') vide award dated 01.03.2001.

2. Learned counsel for the appellant contends that the income of the deceased was taken as a vegetable vendor @ ₹2100/- per month as against minimum wages of ₹1500/- per month as applicable at the relevant time under the Minimum Wages Act, 1948, secondly, that in view of age of the deceased as '46' years, multiplier of 13 ought to have to be taken into account as against multiplier of '15' and thirdly that in the FIR number of the offending vehicle had not been mentioned.

3. On account of non-appearance of Mr. Sandeep Jain, Advocate, for respondent Nos.1 to 5, despite intimation having been sent by the Registry, Ms. Monika Jhangra, Advocate was appointed as Amicus Curiae to assist the Court on behalf of respondent Nos.1 to 5.

4. Learned Amicus Curiae has contended that it is factually incorrect that the minimum wages for an unskilled labourer at the relevant time was ₹1500/- per month. Learned Amicus Curiae has produced on record a photocopy of notification showing the minimum wages applicable in the case of an unskilled labourer for the relevant time and contended that the same was ₹1729.54/- per month. Photocopy of the notification has been furnished by learned Amicus Curiae and the same is handed over to learned counsel for the appellant and is also taken on record as Mark-A. Learned Amicus Curiae further contended that no addition had been made towards future prospects while computing the compensation payable, besides appropriate compensation had not been awarded under the conventional heads. Lastly that deduction had wrongly been made @ 1/3rd of the income of the deceased as against requirement of making deduction @ 1/4th of the income of the deceased in view of the deceased having left behind five dependants.

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

6. Learned counsel for the appellant has not been able to controvert the claim made on behalf of the respondents/claimants by learned Amicus Curiae except to contend that in the absence of any cross-objection or cross-appeal having been filed, the plea for award of future

prospects and enhancement of claim under various heads is not maintainable. I am afraid that in view of the decision of this Court in Ashok Kumar vs Sheela and others 2016 (2) Law Herald 1650 as based on the decision of Hon'ble the Delhi High Court, the objection raised is without any merit.

7. As per notification Mark-A, placed on record by the learned Amicus Curiae, wages payable to an unskilled labourer at the relevant time were ₹1729.54/- and the correctness of the same has also not been disputed by the learned counsel for the appellant. In the circumstances, the income of the deceased is taken at ₹1729.54/- (rounded off to ₹1730/-) as against ₹2100/- taken into account by the learned Tribunal.

8. Secondly, as per paragraph No.21 of the decision of Sarla Verma Vs. Delhi Transport Co-op. and another, 2009 (3) RCR (Civil) 77, multiplier applicable in the case of a deceased aged 46 years is '13'. Accordingly, it is held that multiplier of '13' would apply as against multiplier of '15' as ordered by the learned Tribunal.

9. As regards the plea of learned counsel for the appellant that number of the offending vehicle was not mentioned in the FIR, learned Amicus Curiae contended that PW-1, Desh Raj who was an eye-witness had deposed before the learned Tribunal of accident having caused by the offending vehicle No.HR-32/GA-0110 in his presence and in view thereof, the objection of learned counsel for the appellant does not merit acceptance, especially in view of the fact that the Insurance Company i.e. appellant in the present case could not shatter the credibility of PW-1 Desh

Raj. Accordingly, aforementioned objection raised by learned counsel for the appellant is rejected.

10. Likewise, as per paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, where the deceased was self-employed and between the age group of 40 to 50 years, 25% of the established income of the deceased less tax component was ordered to be added to the income of the deceased on account of future prospects while computing compensation payable. Since, in the instant case, the deceased was self employed and was 46 years of age, therefore, 25% of the established income of the deceased minus tax component is liable to be added to the income of the deceased on account of future prospects while computing compensation.

11. As per paragraph No.30 of the decision of Hon'ble the Supreme Court in Sarla Verma's case (supra), where the deceased left behind 4 to 6 dependents, deduction towards personal expenses of the deceased is to be made @ $1/4^{th}$ of the income of the deceased. Since, in the instant case the deceased left behind five dependents, deduction is to be made @ $1/4^{th}$ of the income of the deceased towards his personal expenses as against $1/3^{rd}$ as ordered by the learned Tribunal.

12. Lastly, as per paragraph No.61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra), ₹40,000/- is payable to the widow of the deceased on account of loss of spousal consortium while as per the decision of Hon'ble the Supreme Court in

Magma General Insurance Co. Ltd. vs Nanu Ram @ Chuhru Ram and others, 2018 (4) RCR (Civil) 333, a sum of ₹ 40,000/- is payable to each of the minor children of the deceased on account of loss of parental consortium. However, in view of the decision of Hon'ble the Supreme Court in Vimla Devi and others vs. National Insurance Company Ltd. and others 2019 RCR (1) (Civil) 86, the amount of compensation on account of loss of spousal and parental consortium is restricted to ₹1,00,000/-.

13. Accordingly, in the light of the position as noted above, objection of the appellant with regard to the income of the deceased and applicability of multiplier is accepted, yet in the end result, the respondents/claimants are held entitled to the following compensation:-

Sr. No.	**Head**	**Amount assessed by the Tribunal**	**Amount assessed by this Court**
1	Income	₹2100/-	₹1730/-
2	Future Prospects	Nil.	₹432/- i.e. 25% of ₹1730/-
3.	Total Income	₹2100/-	₹2162/-
4.	Multiplier applied	15	13
5.	Deduction	1/3rd of ₹2100/- i.e. ₹700/-	1/4th of ₹2162/- i.e. ₹540/-
6.	Dependency	₹1400x12x15=₹2,52,000/-	₹1622x12x13=₹2,53,032/-
7.	Funeral Expenses	₹8,000/-	₹15,000/-
8.	Loss of Estate	Nil.	₹15,000/-
9.	Loss of consortium	Nil.	₹40,000/- to widow, ₹1,60,000/- i.e. ₹40,000/- to each of the four children, however, the loss of consortium is restricted to ₹1,00,000/- in view of decision of Hon'ble the Supreme Court in Vimla Devi's case (supra)
	Total	₹2,60,000/-	₹3,83,032/-

14. Accordingly, as against the compensation of ₹2,60,000/- awarded by the learned Tribunal, respondent Nos.1 to 5/claimants are held entitled to award of compensation of ₹3,83,032/- along with interest @ 9% per annum w.e.f. the date of filing of the claim petition till date of payment, less payment if any already made.

15. Accordingly, the appeal is disposed off and award dated 01.03.2011, passed by the learned Tribunal, Faridabad is modified to the extent as noted above.

(B.S.Walia)
Judge

21.02.2019
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No