

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision-03.12.2019

1. FAO No.3328 of 2019(O&M)

Oriental Insurance Company Limited	... Appellant
Versus	
Dori Lal and others	... Respondents

2. FAO No.3059 of 2019(O&M)

Dori Lal and others	... Appellants
Versus	
Robin Singh and others	... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Brig. Bhup Snigh Taunque, Advocate
for the appellant in FAO No.3328 of 2019 and
for respondent No.3 in FAO No.3059 of 2019.

Mr. Rajesh Goyal, Advocate
for the appellants in FAO No.3059 of 2019 and
for respondents No.1 to 4 in FAO No.3328 of 2019.

RAJ MOHAN SINGH, J.

[1]. Vide this common order FAO No.3328 of 2019 titled Oriental Insurance Company Limited Vs. Dori Lal and others and FAO No.3059 of 2019 titled Dori Lal and others Vs. Robin Singh and other are being disposed of. Since both the appeals have arisen from one accident, therefore, common facts are being noticed.

[2]. The present appeals have been preferred against the award dated 05.12.2018 passed by Motor Accident Claims Tribunal, Panipat (for short 'The Tribunal').

[3]. Brief facts of the case are that on 06.10.2017, deceased Banwari Lal along with his friend Narender Singh went to refinery for some personal work. At about 10 PM, they were returning to their house on separate motorcycles. When they reached near refinery bridge, the offending vehicle being driven by Robin Singh came in a rash and negligent manner from the side of refinery bridge and directly hit the motorcycle of the deceased Banwari Lal. Banwari Lal fell down and sustained multiple injuries on his person. The driver of the offending vehicle fled away along with vehicle. The deceased Banwari Lal was shifted to Civil Hospital, Panipat, where he was declared dead. A criminal case was registered on 07.10.2017 in Police Station Sadar, Panipat.

[4]. Deceased Banwari Lal was aged 35 years at the time of accident and was serving as a Site Incharge in Chembond Water Technologies Ltd. and was working in NFL, Panipat and his salary was Rs.37,709/- per month. The claimants submitted that an amount of Rs.50,000/- was spent on transportation and last rites of the deceased Banwari Lal. Dori Lal is father of the deceased, Manju Devi is widow of the deceased, Vedika Sharma and Manya Sharma are the minor daughters of the deceased Banwari Lal. All the claimants were dependent upon the income of the deceased.

They claimed compensation to the tune of Rs.90,00,000/- along with interest on account of death of Banwari Lal.

[5]. The claim petition was contested by the driver and owner of the offending vehicle jointly. The accident in question was denied. Lodging of FIR was claimed to be false and result of collusion with the police. Insurance Company also contested the case by filing separate written statement to the effect that no intimation was given to the Insurance Company about the alleged accident either by the owner or by the driver of the vehicle. Insurance Company denied the accident and negligence of the driver. Insurance Company further pleaded that the driver of the offending vehicle was not holding any valid and effective driving licence at the time of alleged accident and the vehicle was being driven in contravention of terms and conditions of the Insurance Policy. The quantum of claim set up by the claimants was also questioned being excessive and baseless.

[6]. The Tribunal on the basis of evidence on record held that the accident in question took place due to rash and negligent driving of driver of the offending vehicle namely Robin Singh. The deceased was 35 years of age at the time of accident and was serving as Site Incharge in Chembond Water Technologies Ltd. and was working in NFL, Panipat against the salary of Rs.37,709/- per month. The claimants also spent an amount of Rs.50,000/- towards transportation and last rites of the deceased. PW-1

Jitender Atri brought the summoned record to prove that the deceased was working as Site incharge in NFL, Panipat. The appointment letter, pay slips and ITR of the company for the year 2017-18 were proved on record as Exs.P1 to P22. The witness admitted that their company used to give benefit of Insurance of about Rs.3,50,000/- to the deceased family. Claimant Manju Devi while appearing as PW-2 has also admitted the factum of receiving an amount of Rs.3,42,000/- as insurance from the company of the deceased. Salary slip for the month of September, 2017 (Ex.P3) proved the salary of the deceased to be Rs.37,709/- per month. The income tax returns Ex.P22 for the assessment year 2017-18 and other income tax returns for the assessment year, proved the gross income of the deceased to be Rs.3,78,154/-, deductions under Chapter VI-A to be Rs.1,03,631/-, total income of the deceased to be Rs.2,74,520/- and total tax of Rs.500/- only was paid by the deceased.

[7]. The Tribunal has assessed annual income of the deceased to be Rs.4,52,508/- ($37,709 \times 12 = 4,52,508$). From the income tax returns verification form for the assessment year 2017-18 (Ex.P25), it was evident that the deceased had claimed deduction under Chapter-VI-A for an amount of Rs.1,03,631/-, therefore, round figure of Rs.1,00,000/- was deducted from the annual income of the deceased and income tax payable was calculated as Rs.5330/- which was to be deducted from the annual income of the deceased towards income tax. Thus annual income

of the deceased was calculated as Rs.4,45,178/-. There were four dependents on the deceased, therefore, deduction to the extent of 1/4th towards personal expenses was applied in view of ratio laid down in **Smt. Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77**. The annual income of the deceased was calculated to be Rs.3,33,884/- ($4,45,178 - 1,11,294 = 3,33,884$). Keeping in view the age of the deceased, multiplier of 16 was applied, thereby calculating the amount of Rs.53,42,144/-, to which an amount of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses were added, thereby making total tally to the tune of Rs.54,12,144/-. The aforesaid amount was assessed to be compensation along with interest @7.5% per annum from the date of filing of the claim petition till final realisation of the amount. Apportionment was ordered by the Tribunal as suggested in para No.24 of the award.

[8]. Learned counsel for the appellant submitted that conveyance allowance of Rs.12,488/-, helper allowance of Rs.200/-, outfit allowance of Rs.200/-, profession tax of Rs.200/-, totaling amount of Rs.13,088/- has to be deducted as the same are deductible amounts. The net income of the deceased has to be calculated as Rs.24,621/-. Future prospects to the tune of 40% has to be applied i.e. Rs.9848/- and the same would make the monthly income of the deceased to be Rs.34,469.40. Deduction to the tune of 1/3rd has to be applied i.e. an amount of Rs.11,489.80 has to be

deducted from Rs.34,469.40 and the same would come out to be Rs.22,979.60 per month, to which multiplier of 15 has to be applied, thereby making the dependency to the tune of Rs.41,36,328/-. By adding compensation to the tune of Rs.70,000/- under conventional head, the net compensation would come out to be Rs.42,06,328/-. Income tax @ 10% has to be deducted and that would reduce the compensation to the tune of Rs.37,85,695.20. Learned counsel further submitted that the award made by the Tribunal to the tune of Rs.54,12,144/- is on the higher side.

[9]. I have considered the submissions made by learned counsel for the parties and have also gone through the record.

[10]. The word income has different connotations for different purposes. Only pay packet at the end of the month is not a solitary question, but also other perks which are beneficial to the members of the family have to be considered by the Court after having referred to change of societal conditions. Loss caused to the family on a death of a near and dear one, can hardly be compensated in terms of money. Monthly income of the deceased employee would constitute salary and perks which were paid by the employer for the purpose of computation of compensation. It is a settled principle of law that just compensation has to be calculated in the light of dynamic character of society. Societal conditions do change with the passage of time. Therefore, just compensation

has to be computed so as to add perks which are paid to the employee towards monthly income.

[11]. Section 168 of the Motor Vehicles Act deals with just compensation which has to be given broad meaning. It can be noticed that the private sector companies in place of introducing a pension scheme, take recourse to payment of contributory provident fund, gratuity and other perks to attract efficient workers. Perks are for the benefit of the employee himself as well as for his entire family. Facilities provided to the worker would mean to benefit the family and the same must be considered to be a relevant factor for computing total income on the basis of such perks. The element of pay paid to the deceased employee includes basic pay, conveyance allowance, rent/lease, bonus. In addition to aforesaid amounts, contributory provident fund, LTA reimbursement, medical reimbursement, superannuation amount, gratuity cont., medical policy (self and family), education scholarship etc. are other entitlements to which the employee is entitled.

[12]. The Hon'ble Apex Court in **National Insurance Company Ltd. Vs. Indira Srivastava and others, 2008(1) RCR (Civil) 359** by taking note of **Asha and others Vs. United Indian Insurance Co. Ltd.. and another, 2004 ACC 533** and **Rathi Menon Vs. Union of India, 2001(3) RCR (Civil) 224,** held that in **Asha and others case (supra),** the Court did not address the

question which was raised in **National Insurance Company Ltd. Vs. Indira Srivastava and others case (supra)**. The concept of just compensation was highlighted and the same must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost due to death of the deceased. It has been held that it is in the nature of compensation for future loss to the family income.

[13]. Perks and allowances are to be added for the purpose of computing loss of dependency. So far as future prospects are concerned, 50% must be added only with regard to salary and not with regard to perks. The ratio of **National Insurance Company Ltd. Vs. Indira Srivastava and others case (supra)**, can be relied in this context. In the aforesaid judgment, the decision rendered by the Hon'ble Apex Court in **Asha and others case (supra)** was held to be *per incuriam*. In **Oriental Insurance Company Ltd. Vs. Ram Prasad Varma and others, (2009) 2 SCC 712**, it was held that the amounts which were required to be paid to the deceased employee by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. From the said amount of income, the statutory amount of tax payable thereupon must be deducted. The statutory deductions which are in the form of income tax and profession tax

have to be deducted from the gross income in order to arrive at the net income for the purpose of computing payable compensation under the head of loss of dependency.

[14]. The deductions towards house rent allowance, city compensatory allowance and medical allowance are not permissible from the gross salary and the same should be taken into consideration for calculation of the income of the deceased. At the same time, deductions towards general provident fund and group insurance scheme are not to be included in calculating the income of the deceased.

[15]. In **Raghuvir Singh Matolya and others Vs. Hari Singh Malviya and others, (2009) 15 SCC 363**, it was held that dearness allowance and house rent allowance payable to the deceased should be included for determining the income of the deceased and consequently, the amount of compensation.

[16]. Income tax and profession tax are to be deducted from the salary of a person. Such deduction go to the coffers of the Government under specific head and is not returned. Even in **National Insurance Company Limited Vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009**, it was held that where the actual income is in the taxable range, the words “actual salary” should be read as “actual salary less tax”. Whereas, contributions made to the general provident fund, special provident fund, LIC are amounts paid on specific heads and the contribution is always

repayable to an employee at the time of voluntary retirement, death or for any other reasons. Therefore, such contributions made by the salaried person are deferred payments and they are savings. However, the contributions made by the salaried persons are contractual and can be classified as savings, which would be included while calculating the compensation under the head of loss of dependency.

[17]. In **Vimal Kanwar and others Vs. Kishore Dan and others, (2013) 7 SCC 476**, the Hon'ble Apex Court held that the provident fund, pension and insurance receivable by the claimants cannot offset the compensation i.e. receivable by the heirs on account of death of the family member which is statutory payment under the provision of the Act. Whereas, the pecuniary advantage which is received by the heirs under contractual relationship is distinct and therefore, while calculating the compensation on the head of "loss of dependency", those pecuniary advantages received by the heirs on account of death of a family member cannot be taken note of. It was held that the salary receivable by the claimants on compassionate appointment on account of death of the family member also cannot be deducted while determining the compensation under the Act. The amount payable towards income tax is liable to be deducted while determining the compensation under the Act. Where the annual income is in taxable range, the word actual salary should be read as "actual salary less tax".

[18]. In view of aforesaid precedents, it can be concluded that conveyance allowance, house rent allowance, special personal allowance and contribution towards provident fund while reckoning the net income, cannot be deducted. What had to be excluded are only actual reimbursement, TOT, travel reimbursement, profession tax and income tax, having regard to the slab in which tax is payable.

[19]. In the instant case, learned counsel for the appellant prayed for deduction of conveyance allowance, helper allowance, outfit allowance, which cannot be deducted. Only profession tax of Rs.200/- per month i.e. Rs.2400/- per annum and income tax @ 10% can be deducted while computing dependency of the family.

[20]. In the instant case, monthly salary of the deceased is found to be Rs.37,709/-. 50% towards future prospects has to be added i.e. Rs.18,854.50, thereby making the amount to the tune of Rs.56,563.50 ($37,709 + 18,854.50 = 56,563.50$). In this way, annual income of the deceased would come out to be Rs. 6,78,762/- ($56,563.50 \times 12 = 6,78,762$), out of which an amount of Rs.2,40,000/- is to be considered non-taxable amount as per slab of the income tax returns. In this way, deductions to the tune of 10% towards income tax from the amount of Rs.4,38,762/- ($6,78,762 - 2,40,000 = 4,38,762$) i.e. Rs.43,876.2 (rounded off to Rs.43,876/-) and Rs.200/- per month i.e. Rs.2400/- ($200 \times 12 = 2400$) per annum towards profession tax have to be done and after deducting the

aforesaid amounts, the annual income of the deceased would come out to be Rs.6,32,486/- ($6,78,762 - 43,876 - 2400 = 6,32,486$). Since there are four claimants, therefore, deduction to the tune of $1/4^{\text{th}}$ has to be done i.e. Rs.1,58,121.50 and after deducting the same, the amount of compensation would come out to be Rs.4,74,364.50 ($6,32,486 - 1,58,121.50 = 4,74,364.5$). Keeping in view the age of the deceased and in view of ratio laid down in **Smt. Sarla Verma's case (supra)**, multiplier of 16 has to be applied and after applying the same, the amount of compensation would come out to be Rs.75,89,832/- to which an amount of Rs.70,000/- has to be added towards conventional heads in view of ratio laid down in **National Insurance Company Limited Vs. Pranay Sethi and others case (supra)**. In this way, total amount of compensation would come out to be Rs.76,59,832/- ($75,89,832 + 70,000 = 76,59,832$). Since, the Tribunal has already awarded an amount of Rs.54,12,144/-, therefore, the aforesaid amount has to be deducted and after deducting the same, the enhanced amount of compensation would come out to be Rs.22,47,688/- ($76,59,832 - 54,12,144 = 22,47,688$).

[21]. The enhanced amount of compensation i.e. Rs.22,47,688/- shall carry interest @ 7.5% per annum from the date of filing of the claim petition till final realisation of the amount. Apportionment shall remain the same as suggested by the Tribunal in the award.

[22]. With the aforesaid modification, both the appeals are disposed of.

(RAJ MOHAN SINGH)
JUDGE

03.12.2019

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No