

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 2881 of 2005 (O&M)

Date of Decision: 11.01.2019

Sunder Singh and another

.....Appellants

Versus

Darshan Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Manpreet Kaur, Advocate
for the appellants.

Mr. Pardeep Goyal, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.(oral)

The award dated 14.1.2005 passed by the Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') has been assailed by the legal heirs of Nardeh seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The present appeal has been filed by the husband and daughter of the deceased. The driver of Jeep bearing registration No.HR-45-3917 (hereinafter referred to as the offending vehicle'), owner and insurer i.e. Oriental Insurance Company Limited, have been arrayed as respondents No.1 to 3 in the appeal respectively. The other legal heirs have been arrayed as proforma respondents No. 4 to 9.

The brief facts necessary for adjudication of the present appeal are that on 19.11.2003, Nardeh alongwith Sunder Singh was travelling in a bus and was coming to Chandigarh. On the way the bus stopped Nardeh got

down to answer the call of nature and while she was trying to cross the road,

she was hit by a rashly and negligently driven offending vehicle. As a result of the impact, she sustained grievous injuries and ultimately succumbed to the injuries. FIR was registered.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The owner, driver and insurer were held jointly and severally liable to pay compensation, however, liberty was given to the insurer to proceed against the owner and driver, if so advised. The Tribunal awarded a lump-sum amount of ₹ 1,00,000/- as compensation and ₹14,500/- under conventional heads. A total sum of ₹ 1,14,500/- was awarded alongwith interest at the rate of 9% per annum.

In the claim petition filed it was pleaded that the deceased was doing dairy farming and was earning ₹13,000/- per month. Her age was claimed to be 50 years at the time of accident. But the claimants failed to substantiate the occupation and earning of the deceased. Even there was dispute with regard to age of the deceased at the time of accident as the age of the husband was mentioned as 63 years in the FIR whereas it was claimed 55 years before the Tribunal. It has come on record that the age of the eldest son of the deceased was 37 years at the time of accident. The Tribunal took the age of the deceased as 61 years at the time of accident.

Heard learned counsel for the parties, perused the paper book and the relevant documents produced by them.

Learned counsel for the appellant contends that the Tribunal erred in awarding lump sum amount of compensation instead of applying multiplier method. She argues that the Tribunal erred in considering the age of the deceased as 61 years at the time of accident. She further argues that the

evidence with regard to her occupation. The grievance raised is that the amount awarded under the conventional heads are on lower side.

Learned counsel for the insurer defended the award and argued that the claimants failed to substantiate the occupation and earning of the deceased. However, in view of the settled position of law, he could not raise any serious issue with regard to application of multiplier method for awarding compensation. The Tribunal erred in awarding a lump-sum amount instead of applying multiplier method. The Supreme Court has time and again reiterated that compensation should be awarded by applying multiplier method as it is consistent and logical.

There is nothing on record to prove that the deceased was engaged in dairy farming and was earning from it. Still, her role as a house maker could not be disputed. The contribution of a house-maker towards the family cannot be measured in monetary terms.

The Supreme Court in ***Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others***, 2015 (4) SCC 237, has held as under:

"Even assuming Jayvantiben Jitendra Trivedi was not self employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A housewife/home-maker does not work by the clock and she is inconstant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

It would not be appropriate to equate the house-maker with a unskilled labourer as her dedication towards family is unmatched and she has

multiple roles to play. The minimum wages prevalent in the State at the time of accident can be taken as a yardstick in order to arrive at her monthly notional income. The minimum wages for a unskilled labourer in the State of Haryana at the time of accident were ₹ 2197/- The compensation is calculated considering the monthly earning of the deceased as ₹ 2300/-. As this is the notional income being assessed, thus, no deduction for self-expenses is to be made.

This Court relying upon a decision of Hon'ble the Apex Court in case of Arun Kumar Aggarwal and another Versus National Insurance Company and others (2010-3) 159 PLR 428 (SC) in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others***, Vol. CLXXII (2013-4) 329, has held that no deduction for self expenses is to be made in case of notional income. Relevant para is quoted below:

"15. After the decision in LataWadhwa's case (supra), the notional income of the house wife is estimated according to their age. The notional income of the house wife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

In view of the decisions of the Supreme Court in **National**

the appellants are entitled to ₹ 15,000/- each for funeral expenses and for loss of estate and ₹ 40,000/- is awarded to the husband for loss of consortium.

There is a dispute with regard to the age of the deceased at the time of accident. It was pleaded that she was 50 years of age. Her husband age was given as 63 years in the FIR. It has not been disputed that her eldest son was 37 years old at the time of accident. As it would not be possible to opine the exact age of the deceased, in such circumstance, she is considered to be in age group of 55 to 60 at the time of accident and in consonance with the decision of the Supreme Court in **Pranay Sethi's case (supra)** multiplier of 9 is applied.

In view of above discussion, the compensation is recalculated as under:

Sr. No.	Particulars	Amount
1.	Monthly Notional income and applying multiplier of 9	2300 x 12 x 9= 2,48,400/-
2.	Conventional heads	₹ 70,000/-
3.	Total	₹ 3,18,400/-

The award dated 14.1.2005 is modified to the extent that the amount awarded to the extent of ₹1,14,500/- by the Tribunal is enhanced to ₹3,18,400/-. The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

11.01.2019
reema