

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

557

FAO No.5079 of 2005

Date of Decision : 19.03.2019

MURTI DEVI AND OTHERS**...APPELLANTS****V/S****SUNIL KUMAR AND OTHERS****...RESPONDENTS****Coram : Hon'ble Mr. Justice B.S. Walia**

Present: Mr. Ashit Malik, Advocate
for the appellants.

Mr. Ravinder Malik, Advocate
for respondent Nos.1 & 2.

Mr. Gopal Mittal, Advocate
for respondent No.3/*Insurance Company*.

B.S. WALIA, J. (ORAL)

[1] Appeal has been filed by the widow and two sons of the deceased, seeking enhancement of compensation of ₹2,01,000/-, awarded by the learned Motor Accidents Claims Tribunal, Sonapat (hereinafter referred to as 'the Tribunal') on account of death of Rameshwar Dayal in a motor vehicular accident on 03.10.2004 on account of injuries sustained in a motor vehicular accident on 19.09.2004.

[2] The learned Tribunal took into account the income of the deceased as unskilled labourer as ₹2400/- per month, age of the deceased as 65 years on the basis of postmortem report, imposed deduction of 1/3rd of the income of the deceased towards his personal expenses and by applying multiplier of '5' and further by awarding ₹90,000/- on account of medical

expenses, ₹5000/- on account of loss of consortium and ₹10,000/- on account of last rites, awarded total compensation of ₹2,01,000/-.

[3] Learned counsel contended that even if it be assumed that the deceased was 65 years of age, yet as per paragraph No.42 of the decision of Hon'ble the Supreme Court in 'Sarla Verma and others versus Delhi Transport Corporation and another', 2009(6) SCC 121', multiplier of '7' was applicable. Further a sum of ₹15,000/- was payable on account of funeral expenses and like amount on account of loss of estate, besides ₹40,000/- on account of loss of spousal consortium.

[4] Learned counsel for the respondent-*Insurance Company* fairly does not dispute that multiplier of '7' is applicable in case of deceased aged 65 years, as also that in view of decision of Hon'ble the Supreme Court in 'National Insurance Company Limited versus Pranay Sethi and others', 2017(4) RCR (Civil) 1009, ₹15,000/- is payable on account of funeral expenses, ₹15,000/- on account of loss of estate and ₹40,000/- on account of loss of spousal consortium.

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

[6] In the absence of any evidence led by the appellants, the learned Tribunal rightly took into account the age of the deceased as 65 years on the basis of postmortem report. As per paragraph No.42 of the decision of Hon'ble the Supreme Court in Sarla Verma's case (*supra*), multiplier of '7' is applicable in the case of deceased aged 61 to 65 years. Further as per paragraph No.61(viii) of the decision of Hon'ble the Supreme Court in 'Pranay Sethi's case (*surpa*), ₹15,000/- is payable on account of funeral

expenses, ₹15,000/- on account of loss of estate and ₹40,000/- on account of loss of spousal consortium.

[7] The accident took place on 19.09.2004, while Rameshwar Dayal died on 03.10.2004 i.e. approximately after 15 days. Hon'ble the Supreme Court in 'N. Sivammal and others versus Managing Director, Pandian Roadways Corporation and others', (1985) 1 SCC 18, in a similar case while taking into account of the deceased therein having hovered between life and death for a period of 19 days, therefore of having suffered continuous pain and suffering due to the severe injuries restored compensation of ₹5,000/- awarded by the learned Tribunal under the heading of mental agony suffered by the claimants though by changing the head to pain & suffering of the deceased. Relevant extract of the decision in 'N. Sivammal's case (*supra*) is reproduced as under:-

“4. Thereafter, the High Court proceeded meticulously to examine every item of compensation included in the award. The High Court held that award of 5000/- under the head mental agony suffered by the claimants as a result of the death of the deceased cannot legally be sustained. This is only the different way of looking at the same thing which is legally permissible. Muthukrishnan lived for 19 days since the accident and he was throughout under a shadow of death. He had suffered severe injuries. He must have suffered continuous pain and compensation was admissible for pain and suffering, suffered by the deceased. Therefore, the amount of ₹5000/- which the High Court held inadmissible, is legitimately admissible under another head and therefore by charging the head we restore the amount of ₹5000/- awarded by the Tribunal.”

[8] Since in the instant case, the deceased remained admitted in hospital for a period of close to 15 days, accordingly, I find that some compensation be awarded on account of pain and suffering which the deceased suffered for a period of 15 days prior to his death after receiving injuries on 19.09.2004. Since the accident was of the year 1978, a token amount of ₹5000/- was awarded.

[9] Since the accident in the instant case is of the year 2004, therefore, I am of the view that a sum of ₹20,000/- would be just and proper to award on account of pain and suffering of the deceased in view of the decision of Hon’ble the Supreme Court. In the circumstances, the appellants are held entitled to the following compensation:-

Particulars	Assessed by the Tribunal (in ₹)	Re-assessed by the High Court (in ₹)
Income assessed	2400/-	2400/-
Add:Future Prospects	NIL	NIL
Deductions	1/3 rd of 2400 = 800/-	1/3 rd of 2400 = 800/-
Total Income	1600/-	1600/-
Multiplier	5	7
Dependency	1600 x 12 x 5 = 96,000/-	1600 x 12 x 7 = 1,34,400/-
Medical Expenses	90,000/-	90,000/-
Funeral Expenses	10,000/-	15,000/-
Loss of Spousal Consortium	5,000/-	40,000/-
Loss of Estate	NIL	15,000/-
Pain & Suffering	NIL	10,000/-
Transportation Charges	NIL	10,000/-
Total compensation	2,01,000/-	3,14,400/-

10. Accordingly, in the light of the position as noted above, as against compensation of ₹2,01,000/-, the appellants are held entitled to award of ₹3,14,400/- along with interest @ 6% per annum, Accordingly, the appeal is **allowed**, award dated 09.08.2005, passed by the learned Motor Accidents Claims Tribunal, Sonapat is **modified** to the extent as noted above.

(B.S. WALIA)
JUDGE

March 19, 2019
'Rajneesh'

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