IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2362 of 2011 (O&M)
Date of decision: 26.8.2019

Smt. Nirmo Devi and others

...Appellants

Versus

Samrat Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.D. Sharma, Advocate, for the appellants.

Ms. Shamsher Kaur, Advocate, for respondent No.3—Insurance Company.

JAISHREE THAKUR, J.

1. The instant appeal has been filed seeking to enhancement of the compensation as allowed by the the Motor Accident Claims Tribunal, Gurdaspur, by its award dated 11.10.2010.

2. In brief, the facts are that an accident took place on 10.12.1994 due to a powerful bomb explosion in a bus bearing registration No. JK–02B/4936, which was being driven by Samrat Singh—respondent No. 1, owned by Rajinder Kumar—respondent No. 2 and insured by Oriental Insurance Company Limited—respondent No. 3. The deceased Mangu Ram was travelling on the said ill-fated bus from Jammu to Kathua and as soon as the bus reached near Balole bridge in the district Jammu a powerful bomb exploded around 12:20 PM. On account of the explosion, Mangu Ram suffered several injuries and was immediately shifted to Government Medical College and Hospital, Jammu, where he succumbed to injuries on

14.12.1994. The claimants, namely the widow and 4 children of the deceased filed a claim petition claiming compensation on account of his death. It was stated that the deceased was 43 years of age and was serving as Mate at Garrson Engineer (M.E.S.) Akhnoor (J&K) with a salary of ₹3,500/- per month and all the claimants were dependent upon him. It was stated that an amount of ₹50,000/- had been spent upon his treatment in the hospital. After evidence had been led, the Tribunal awarded a sum of ₹1,44,000/- in favour of the widow, while holding that the other claimants were not entitled to claim compensation as they were not dependent upon the deceased. It was held that appellant No. 2, namely the son of the deceased was already working as a labourer and earning a salary, whereas all the daughters of the deceased were married and settled in their respective matrimonial home. It was also noted that the widow Nirmo Devi was getting a pension of ₹3,000/- per month. Aggrieved against the compensation as allowed by the Motor Accident Claims Tribunal, Gurdaspur, the instant appeal has been filed.

3. Mr. R.D. Sharma, Advocate, appearing on behalf of the appellants, urges that the compensation that has been allowed is not in conformity with the judgment is rendered by the Hon'ble Supreme Court in **Sarla Verma and others Versus Delhi Transport Corporation and another (2009) 6 SCC 121** and **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009.** It is argued that the deceased was 50 years of age and, therefore, the Tribunal has erred in holding that the deceased must be spending 1/3rd of its total salary for his

personal expenses and allowed annual dependency of ₹28,800/- per annum, and after applying a multiplier of 5 held that the claimant widow would be entitled to ₹1,44,000/- without allowing future prospects and expenses under conventional heads.

4. Per contra, Ms. Shamsher Kaur, learned counsel appearing our behalf of the Insurance Company, vehemently argues that the multiplier of 13 and addition of 30% of the income towards future prospects would not be sustainable and that at best a multiplier of 11 and addition of 15% towards future prospects should be applied, as the deceased was more than 50 Years old.

5. I have heard the counsel for the parties and have perused the impugned award.

6. The facts are not in dispute since there is no challenge to the award either by the Insurance Company or the driver. The fact that a bomb blast took place in the bus the deceased was travelling by and that he died on account of the injuries suffered stand established. The age of the deceased was stated to be 50 years which again has not been challenged by the Insurance Company. The only question that arises is, whether the compensation assessed is adequate or not ?

7. The deceased was 50 years of age and had an income of ₹3500/-per month. The Tribunal had allowed the deduction of 1/3rd of the salary towards personal and living expenses and further applied a multiplier of 5. Learned counsel appearing on behalf of the respondent contends that since the deceased had attained the age of 50 years, a multiplier of 11

should be made applicable which argument is not sustainable. As per the judgment rendered in Pranay Sethi (Supra), which is a Constitutional Bench, the multiplier to be applied would be 13 since the deceased had not completed 50 years and would not fall into the category of 51- to 55 years. Similarly on the same analogy, an addition of 30% would be allowed on account of future prospects, since the deceased was holding a permanent job and had not completed 50 years.

8. The argument raised that the deduction applicable should be 1/2 instead of 1/3rd as applied by the Tribunal is also not sustainable. The question of deduction for personal and living expenses was dealt with in **Sarla Verma and others Versus Delhi Transport Corporation and another (2009) 6 SCC 121**, wherein the Hon'ble Supreme Court after noticing various judgments of the Hon'ble Supreme Court on the subject matter and after detailed discussion on the facts also held that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd). In **Sarla Verma's case (supra),** the Hon'ble Supreme Court held as under:-

> *"14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family*

members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

9. Further a three Judge Bench of the Hon'ble Supreme Court in **Reshma Kumari and others Versus Madan Mohan and another (2013) 9 SCC 65** and a five Judge Bench in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009** approved the guidelines for the appropriate deduction for personal and living expenses as

given in **Sarla Verma's case (supra).** In Reshma Kumari's case the Hon'ble Supreme Court held as under:-

> *"xx xx xx*
>
> *43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma, subject to the observations made by us in para 41 above".*

10. In **Pranay Sethi's case,** the Hon'ble Supreme Court held as under:-

> *"43. On a perusal of the analysis made in Sarla Verma which has been reconsidered in Reshma Kumari, we think it appropriate to state that as far as the guidance provided for appropriate deduction for personal and living expenses is concerned, the tribunals and courts should be guided by conclusion 43.6 Reshma Kumari. We concur with the same as we have no hesitation in approving the method provided therein."*

11. In view of the above settled position of law, this Court has no hesitation in holding that 1/3rd of the salary of the deceased has rightly been deducted towards his personal and living expenses. Furthermore, the Tribunal has rightly held that only widow of the deceased is entitled for the compensation since his son was major and was working as a labourer and his daughters were married and were residing in their respective in-law houses and as such were not dependent on the deceased.

Even otherwise the compensation is to be enhanced as compensation had not been allowed under the conventional heads, keeping in view the judgment of the Supreme Court in **National Insurance**

Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009. Therefore, compensation payable to the appellants is re-worked and tabulated as under:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Mangu Ram
(ii)	Date of accident	10.12.1994
(iii)	Age of the deceased	50 years
(iv)	Monthly income of the deceased	₹ 3500/-
(v)	30% of (iv) is to be added towards future prospects	(₹ 3500+₹1050)= ₹ 4550/- per month
(vi)	1/3rd of (v) above deducted towards personal expenses	(₹ 4550-₹1517) = ₹ 3033/- per month
(vii)	Compensation calculated after applying the multiplier of 13	(₹3033X12X13) = ₹ 4,73,148/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹5,43,148

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to the appellant No.1 /claimant shall be ₹ 5,43,148/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the petition till the date of payment.

26.8.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No