[216] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5460 of 2006
Date of decision: 11.02.2019

Parveen Bhandari and others. ..... Appellants

Versus

Pawitter Singh and others. ..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Suveer Sheokand, Advocate for the appellants.

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

***

**B.S. WALIA, J. (ORAL)**

[1] Appeal has been filed by the mother, widow, daughter and son of Jatinder Kumar Bhandari who died in a motor vehicular accident on 03.04.2003.

[2] Prayer is for enhancement of compensation of ₹ 5,43,310/- awarded by the learned Motor Accidents Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal').

[3] The learned Tribunal by taking into account the deceased Jatinder Kumar Bhandari working as Senior Lecturer in English Department at Arya College, Ludhiana assessed his income at ₹ 14520/- per month, applied multiplier of 5, made deduction of 1/3rd of the income towards his personal expenses and by awarding ₹ 2000/- on account of funeral expenses, ₹ 5,000/- on account of loss of spousal consortium, ₹ 5000/- on account of love and affection, awarded total compensation of ₹ 5,43,310/-.

[4] Learned counsel for the appellants contended that the appeal is liable to be allowed, award modified and compensation payable enhanced by awarding future prospects by taking into account the age of the deceased as less than 50 years, applying multiplier of 13, besides, by awarding appropriate compensation on account of spousal and parental consortium as also by taking into account the income of the deceased as per his salary certificate Ex.A1 which reflected gross-salary of ₹ 25,114/- per month.

[5] Learned counsel for respondent No.3-Insurance Company fairly did not dispute taking into account the gross salary of ₹ 25,114/- per month but contended that the same was subject to deduction of income-tax liability i.e.Rs.50,500/- as per the tax payable on the annual income of the deceased for the relevant assessment year in view of para 61 (iii) of the decision of Hon'ble the Supreme Court in National Insurance Company Limited vs Pranay Sethi and others, 2017 (4) RCR (Civil) 1009. The tax liability as stated by learned counsel for the Insurance Company is not disputed by counsel for the appellants.

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

[7] Admittedly, the deceased was found to be 48 years of age as per the post-mortem report (Ex.A5) whereas in the affidavit (Ex.PB), widow of the deceased had stated that her husband was 50 years of age at the time of his death in a road accident. To my mind, in the circumstances, the age of the deceased had to be treated as 48 years and in any case less than 50 years. In the circumstances, the finding of the learned Tribunal that the deceased was more than 50 years of age at the time of his death while applying multiplier of 5 as applicable in the case of a person of the age group of more than 65 years, is totally unwarranted.

[8] Accordingly, the plea of learned counsel for respondent No.3-Insurance Company that the deceased was more than 50 years of age at the time of his death is without merit and is rejected since, once it has come in the post-mortem report that the deceased was 48 years of age, there is no basis for the learned Tribunal to have taken into account that the deceased was more than 50 years of age or to have applied the multiplier of 5 as applicable in the case of a person more than 65 years of age.

[9] In the light of the position as noted above, as per paragraph No.21 of the decision of Hon'ble the Supreme Court in **Sarla Verma vs Delhi Transport Corporation, 2009 ACJ 1298**, for the age group of 46 to 50 years, multiplier of 13 is applicable. Accordingly, the same shall be taken into account while computing the compensation payable in the instant case.

[10] Since the deceased was working as Senior Lecturer in English Department at Arya College, Ludhiana and as per the post-mortem report (Ex.A5) the deceased was found to be 48 years of age and has been treated to be less than 50 years of age, therefore, as per paragraph No.61 (iii) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, 30 % of the established income of the deceased minus the tax component shall be taken into account towards future prospects while computing the compensation payable.

[11] The learned Tribunal made deduction of 1/3$^{rd}$ of the income of the deceased towards his personal expenses despite the fact that the deceased left behind four dependents i.e. mother, widow, daughter and son. As per paragraph No. 14 of the decision of Hon'ble the Supreme Court in Sarla Verma's case (Supra) where number of dependents of the deceased is between 4 to 6, personal expenses of the deceased are to be deducted @ 1/4$^{th}$

of the income of the deceased. Since, in the instant case, the deceased left behind four dependents, therefore, deduction of personal expenses of the deceased shall be made @ 1/4th of the income of the deceased while working out compensation payable as against deduction of 1/3rd made by the learned Tribunal.

[12] Likewise, as per paragraph No.61 (viii) of the decision in **Pranay Sethi's case (Supra)**, ₹ 15,000/- is payable on account of funeral expenses and ₹ 15,000/- on account of loss of estate.

Accordingly, as against compensation of ₹ 5000/- awarded on account of funeral expenses and nil on account of loss of estate, the appellants are held entitled to ₹ 15,000/- each on account of funeral expenses and loss of estate.

[13] Widow of the deceased was awarded ₹ 5,000/- on account of loss of spousal consortium whereas as per the decision in **Pranay Sethi's case (Supra)**, widow of the deceased is entitled to ₹ 40,000/- on account of loss of spousal consortium. Further, as per paragraph No.8.7 of 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 child on account of loss of parental consortium and since, the deceased left behind two minor children, therefore, apart from sum of ₹ 40,000/- payable to the widow of the deceased on account of loss of spousal consortium, ₹ 80,000/- is payable to the two children of the deceased on account of loss of parental consortium.

[14] Faced with the aforementioned position, learned counsel for the Insurance Company contended that in view of the subsequent decision of Hon'ble the Supreme Court in **Vimla Devi and others vs National Insurance Company Ltd. and others 2019 (1) RCR (Civil) 86**, award of

compensation on account of loss of spousal and parental consortium in the case of widow and two minor children was restricted to ₹ 1,00,000/- therefore the same compensation be awarded in the instant case also. In the light of the position as noted above, compensation payable on account of loss of spousal and parental consortium to the widow and three children of the deceased is restricted to ₹ 1,00,000/-.

[15] Since, in the instant case, the deceased as per salary certificate Ex.A1 was drawing gross salary of ₹ 25,114/- per month, the said amount will be taken into account for computing the compensation payable in accordance with the decision of Hon'ble the Supreme Court in **Shyamwati Sharma and others vs Karam Singh and others, 2010 (4) SCC (Civil) 626** instead of basic salary of ₹ 14,520/- per month as taken into account by the learned Tribunal. However, the same would be subject to deduction of income tax as payable as per the rates applicable in accordance with the decision of Hon'ble the Supreme Court in **Mansvi Jain vs Delhi Transport Corporation and others, 2014 ACJ 1416**

[16] In the light of the position as noted above, appellants are held entitled to the following compensation:-

| **Sr. No.** | **Heads** | **Amount assessed by the Tribunal** | **Amount assessed by this Court** |
|---|---|---|---|
| 1. | Monthly Income | ₹ 14520/- | ₹ 25114/- |
| 2. | Annual Income | ₹ 14520/- x 12 = ₹ 1,74,240 /- | ₹ 25114/- x 12 = ₹ 3,01,368/- |
| 3. | Deduction of Tax | ₹ 14,848/- | ₹ 50,500/- |
| 4. | Net Annual Income | ₹ 1,59,392/- | ₹ 2,50,868/- |
| 5. | Future Prospects | Nil | 30% of ₹ 2,50,868/- = ₹ 75260.4/- |
| 6. | Total Income Assessed | ₹ 1,59,392/- | ₹ 2,50,868/- + ₹ 75260.4/- = |

| | | | |
|---|---|---|---|
| | | | ₹ 3,26,128.4/- |
| 7. | Deduction (towards personal expenses of deceased) | 1/3rd of ₹ 1,59,392/- = ₹ 53,130/- | 1/4th of ₹ 3,26,128.4/- = ₹ 81,532.1/- |
| 8. | Dependency (Annual) | ₹ 1,59,392/- - ₹ 53,130/- = ₹ 1,06,262/-/- | ₹ 3,26,128.4/- - ₹ 81,532.1/- = ₹ 2,44,596.3/- |
| 9. | Multiplier Applied | 5 | 13 |
| 10. | Compensation awarded by applying multiplier | ₹ 1,06,262 /- x 5 = ₹ 5,31,310/- | ₹ 2,44,596.3/- x 13 = ₹ 31,79,751.9/- (rounded off to ₹ 31,79,752/-) |
| 11. | Loss of consortium | ₹ 5,000/- | ₹ 40,000/- (Widow) ₹ 40,000/- each (to daughter and son i.e. ₹ 80,000/- )<br><br>Total = **₹ 1,20,000/-**)<br><br>However, compensation on account of loss of spousal/parental consortium is kept at **₹ 1,00,000/-** in view of decision of Hon'ble the Supreme Court in Vimla Devi's case |
| 12. | Funeral Expenses | ₹ 2,000/- | ₹ 15,000/- |
| 13. | Loss of Estate | NIL | ₹ 15,000/- |
| 14. | Loss of love and affection | ₹ 5,000/- | NIL |
| 15. | Rate of interest | 7.5 % per annum | 7.5% per annum |
| | **Total** | **₹ 5,43,310/-** | **₹ 33,09,752/-** |

[17] Accordingly, as against compensation of ₹ 5,43,310/- awarded by the Tribunal, the appellants are held entitled to compensation of **₹ 33,09,752/-** along with interest @ 7.5% on the enhanced amount per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier after first making payment of compensation on account of loss of spousal/parental consortium to the widow, daughter and son of the deceased. Apportionment of the compensation shall be made in accordance with the ratio stipulated in the award passed by the learned Tribunal.

[18] Accordingly, appeal is allowed by modifying Award dated 27.07.2006 passed by the learned Tribunal, Ludhiana to the extent as noted above.

(B.S. WALIA)
JUDGE

11.02.2019
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.