IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3741 of 2011

Date of Decision: 12.04.2019

Pushkar and another

.......Appellants

Versus

Satpal Singh @ Raju and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Deepak Balyan, Advocate and
Mr. Kanwal Goyal, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No.3.

Mr. B.S. Bajwa, Advocate for
Mr. D.P. Gupta, Advocate
for respondent No.5.

AVNEESH JHINGAN, J.(oral)

The present appeal has been filed against award dated 1.12.2010 passed by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The appellants are the son and mother of deceased. The widow of the deceased died during the claim proceedings.

Driver, owner and insurer (i.e. Bajaj Allianz General Insurance Company Ltd.) of Innova bearing registration No.DL-7CG-2724 (for short 'the offending vehicle') have been arrayed as respondents No. 1 to 3 and owner and insurer (i.e. Oriental Insurance Company Ltd.) of Maruti Car bearing registration No.CH01L-6062 (for short 'Maruti Car') have been arrayed as respondents No. 4 and 5.

The facts emanating from record are that on 3.6.2008 Ishwar Singh was coming back to Hisar after doing the office work. He was travelling in Maruti Car. When he reached near village Kukrawali, the Maruti car was hit by the offending vehicle, due to the impact Ishwar Singh sustained grievous injuries. He was taken to General Hospital, Fatehabad, where he succumbed to the injuries. FIR No. 185 dated 3.6.2008 was registered at Police Station Sadar Fatehabad.

In the claim proceeding, it was proved that the deceased was 46 years of age and was employed with Traders and Engineers Pvt. Ltd. Kolkata, as site Engineer for project of Morinda Northern Railways, Chandigarh Punjab. It was proved that he was drawing gross salary of ₹ 26,400/- per month. The Tribunal only considered the basic salary of ₹ 14,400/-, made 1/3rd deduction of self-expenses, applied multiplier of 13 and awarded a sum of ₹ 15,18,600/- along with interest at the rate of 9% per annum. The amount awarded included ₹ 6000/- for funeral expenses and ₹ 15,000/- as fee for local commission.

The Tribunal considering the facts and appreciating the evidence adduced held that the accident was result of rash and negligent driving of the offending vehicle. Owner, driver and insurer of the offending vehicle were held liable to pay compensation jointly and severally.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellants raises three fold submissions. Firstly, that the Tribunal erred in considering only the basic salary for calculating the compensation; secondly no future prospects have been awarded and lastly that the amounts awarded under conventional heads are on lower side.

Learned counsel for the insurer argues that conveyance allowance should not be considered for calculating compensation as the same was reimbursement of expenses. He further argues that income tax payable should be deducted.

From the perusal of the record it is evident that the appointment letter was produced as Ex.P9. As per the appointment letter dated 7.2.2007 deceased was getting per month a gross salary of ₹ 22000/-. The components of the salary were:-basic salary ₹ 12,000/-, House Rent Allowance (HRA) ₹ 5000/-, conveyance allowance ₹ 800/- and project/other/special allowance ₹ 4200/-. Increment letter dated 2.3.2008 was exhibited as Ex.P10. As per the said letter deceased was drawing salary of ₹ 26,400/-. The split was ₹14,400/- as basic, ₹ 6000/- as HRA, ₹ 960/- as conveyance allowance and ₹ 5040/- as project/other/special allowance.

The Tribunal erred in considering only the basic salary.

The Supreme Court in ***Manasvi Jain vs. Delhi Transport Corporation, (2014) 3 SCC 22*** has held as under :-

> *"12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased."*

HRA and special allowance was part of salary and were recurring, as per decision of the Supreme Court in **Manasvi Jain's case (supra)** these are considered for calculation compensation.

The Tribunal did not consider HRA and special allowance as part of salary by stating following reasons:

> "I must mention over here that HRA was admissible only if he was working at Kolkata. The conveyance charges are the personal expenses of the deceased and other allowances regarding Project were only available if he was working in the field, that cannot be said to be a regular and recurring income of the deceased."

The Tribunal erred in reading into the conditions which were not there for payment of HRA and special allowance. No pre-requisite were there in appointment letter and increment letter for payment of HRA and special allowance as stated by Tribunal.

Conveyance allowance was only reimbursement of expenses and the same is not being treated as part of salary for calculation of compensation.

For calculation, ₹25,440/- salary is taken after deducting conveyance allowance. As there is no exact figure available to calculate the income tax payable, a sum of ₹ 10,000/- is deducted for income tax payable.

There is no dispute between the parties with regard to 1/3rd deduction made and multiplier of 13 applied as deceased was 46 years of age.

The deceased was having a permanent job, he had completed his probation period and thereafter was given an increment. He was in the age group of 40-50 and as per the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 (SC)***

5157, 30% future prospects are awarded.

As per the decision of the Supreme Court in **Pranay Sethi's case (supra)** ₹ 15,000/- each is awarded on account of funeral expenses and loss of estate and ₹ 40,000/- is awarded to the widow for loss of consortium as the wife of deceased was alive at the time of filing claim petition and was one of the claimants while filing the claim petition.

The compensation is recalculated as under:

Sr. No.	Particulars	Amount Awarded
1.	Income (25440 x12)	₹ 25,440/- ₹ 3,05,280/-
2.	30% future prospects	₹ 91,584/-
4.	Income Tax deducted	₹ 10,000/- ₹ 3,86,864/-
5.	1/3rd deduction for self-expenses	₹ 1,28,955/-
6.	Multiplier of 13 (2,59,243x13)	₹ 33,52,817/-
7.	Conventional heads	₹ 70,000/-
8.	Fee of Local commission	₹ 15,000/-
9.	Total	₹ 34,37,817/-

The award dated 1.12.2010 is modified to the extent that amount awarded of ₹ 15,18,600/- by the Tribunal is enhanced to ₹ 34,37,817/-.

The claimants shall be entitled to enhanced amount alongwith interest as awarded by the Tribunal from the date of filing the claim petition till the realization of the amount.

The appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

12.04.2019
reema

Whether speaking/reasoned Yes
Whether Reportable: Yes