

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

CM No. 22574 CII of 2012 in/and
FAO No. 5099 of 2012 (O&M)
Date of Decision: October 14, 2019

Prem Narain and others

...Appellants

Versus

Vikram Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arvind Kumar Yadav, Advocate
for the appellants.

None for respondents No. 1 and 2.

Mr. Sanjeev Goyal, Advocate,
for respondents No.3.

Mr. Zorawar Singh, Advocate,
for respondent No.4.

JAISHREE THAKUR, J.

1. This is an appeal that has been filed seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Rewari, on account of the death of Rajesh Kaushik in a road accident.

2. In brief, the facts are that on 29.10.2010, Rajesh Kaushik was going towards the petrol pump on Mohindergarh Road on his motorcycle bearing registration No. HR-36-H-2116 and when he reached near the culvert on Rewari—Mohindergarh road, he was hit by a Scorpio Jeep bearing registration No. HR-36-H/3339, being driven by respondent No.1 in

rash and negligent manner. The impact of the accident was such that Rajesh Kaushik died at the spot. It was alleged that the accident took place due to the rash and negligent driving of respondent No.1 and consequently FIR No. 193 dated 29.10.2010 under Sections 279, 304-A IPC came to be lodged with the Police Station Sadar, Rampura, District Rewari. With these averments, a claim petition was filed by the claimants/appellants and respondent No.4 claiming that they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was working with Nerolac Paints, Bawal and was earning ₹21,796/- per month.

3. The Tribunal, after considering the oral as well as the documentary evidence led before it, held that the accident was the result of rash and negligent driving of respondent No.1 and thereafter proceeded to assess the compensation payable to the claimants. In order to prove the income of the deceased, the claimants examined Ashwani, Officer HR, Nerolac Paints, as PW2, who stated that Rajesh Kaushik was working with Nerolac Paints, Bawal from 1.12.2006 till 29.10.2010 and produced salary certificate Ex. P.2, which would reflect that the deceased was drawing gross salary of ₹21,796/- per month, which included ₹1800/- as conveyance allowance and ₹1300/- as Bonus/Ex-gratia. The Tribunal deducted the conveyance allowance and bonus, amounting to ₹3100/- and thus assessed monthly income of the deceased at ₹18,696/-. The Tribunal deducted 1/3rd of the income towards personal and living expenses of the deceased and keeping in view the fact that the deceased was 26 years of age, applied multiplier of 16. Apart from that, the Tribunal awarded ₹5,000/- towards loss of consortium and an amount of ₹2,000/- on account of last rites and

thus assessed a total sum of ₹24,000,88/- payable as compensation to the claimants. Not satisfied with the quantum of compensation, the appellants have filed the instant appeal.

4. While assailing the award, learned counsel for the appellants submits that the Tribunal has erred in deducting the conveyance allowance (of ₹1800/-) and the bounus/Ex-Gratia amount (of ₹1300/-) from the total salary amount of ₹21796/-. It is submitted that both the conveyance allowance and the bonus are components of the salary being drawn by the deceased and as such that amount ought to have been taken into consideration while calcuating his gross income. In support of his contention, he relies on the judgment rendered by the Hon'ble Supreme Court in **Sunil Sharma and others Versus Bachitar Singh and others 2011 (2) R.C.R. (Civil) 708**. It also submitted that no amount of compensation has been awarded on account of future prospects on the earning of the deceased and even the Tribunal has erred in applying the multiplier of 16, whereas since the deceased was 26 years old, multiplier of 17 ought to have been applied. It is also submitted that the Tribunal has wrongly deducted 1/3rd towards personal and living expenses of the deceased, whereas 1/4th amount ought to have been deducted. It is therefore submitted that the amount awarded under various heads is very low and the quantum of compensation has not been assessed as per the judgments 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 therefore, prayed that the amount of

compensation is not just compensation and seeks for enhancement of the same.

5. On the other hand, learned counsel for the respondent—Insurance Company would contend that the Tribunal has considered all the relevant materials and evidence on record and has rightly deducted the conveyance allowance and the bonus amount, while assessing the monthly income payable to the claimants. Rather it is submitted that the Tribunal has gone wrong in not deducting any amount towards income tax that would have been payable on the gross salary of the deceased. Therefore, it is prayed that as the claimants have received compensation in excess, no interference is called for in the instant appeal and the same deserves to be dismissed.

6. I have heard learned counsel for the parties and with their assistance have gone through the impugned order and the documents annexed with the instant appeal.

7. The factum of the accident is not disputed since no appeal has been preferred either by the driver/owner of the offending vehicle or by the Insurance Company. Therefore, the question that falls for determination would be, whether the Tribunal has erred in assessing the compensation as payable and deducting the conveyance allowance and the bonus from the gross salary of the deceased, which otherwise form part of the salary components. A perusal of the salary certificate (Ex. P2), available on the record, shows that the deceased was drawing gross monthly salary of ₹21,796/- and the annual package was ₹2,95,766./-. The monthly salary comprised of basic pay, House Rent Allowance, Location Allowance,

Conveyance Allowance, Special Allowance and Bonus. It is well known fact that private concerns do not give consolidated salary, however, break the same up under various heads to make a package more attractive. Salary structure includes various components like: Fixed Salary, which includes basic, Dearness Allowance, HRA, conveyance allowances, city compensatory allowance, special allowances, etc. It is not in dispute that conveyance allowance, medical allowance and bonus, all form part of consolidated salary that an employee takes home and, therefore, this Court is of the opinion that the Tribunal has erred in deducting the conveyance allowance and bonus from the gross salary payable to the deceased. In this view of the matter, this Court is of the opinion that salary of the deceased is to be taken as per the Salary Certificate Ex. P.2. The arguments as raised by the learned counsel for the appellants that the conveyance allowance forms part of the gross salary draws support and is in terms of the judgment delivered by the Hon'ble Supreme Court in **Sunil Sharma's case (Supra)**.

8. However, the argument as raised by the learned counsel for the respondents that the Tribunal has erred in not deducting the amount payable towards income tax, appears to be justifiable.

9. Admittedly, as per the Salary certificate (Ex. P2), the deceased was drawing monthly salary of ₹21,796/-, which included conveyance allowance of ₹1800/-. The gross annual salary of the deceased was ₹2,39,952/- with deduction of ₹9,600/- for conveyance allowance (as per the income tax calculator of the relevant year), a non-taxable component. Since the deceased had an income which would be liable to be taxed, the tax payable has to be deducted before determining his monthly/annul gross

income. Income upto ₹1,60,000/- was exempted from taxation at the relevant time. Since he fell in the second slab of income of ₹1,60,001 to ₹2,50,000/-, therefore, he would be liable to pay tax at the rate of 10%, on ₹70,352/-, which comes to approximately ₹7,000. Therefore, his annual income would come to ₹2,25,952/- and the monthly earning would be ₹18,829.

10. Furthermore, in view of the fact that the deceased was 26 years of age, multiplier of 17 should have been applied and apart from that increase in income on account of future prospects at the rate of 40% and other conventional heads are required to be reckoned, 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:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Rajesh Kaushik
(ii)	Date of accident	29.10.2010
(iii)	Age of the deceased	26 years
(iv)	Monthly income of the deceased	₹
(v)	40% of (iv) is to be added towards future prospects	(₹18829+₹7531)= ₹26,360/- per month
(vi)	1/3 rd of (v) above deducted towards personal expenses	(₹26360-₹8786= ₹17574/- per month
(vii)	Compensation calculated after applying the multiplier of 17	(₹117574X12X17) = ₹ 35,85,096
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹ 36,55,096

11. 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 claimants shall be ₹36,55,096/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the instant appeal till the date of payment. An application under Order 41 Rule 27 of the Code of Civil Procedure had been filed by the appellants along with the appeal. Claimant—Monisha, widow has been impleaded as respondent No.4 and the appeal has been filed by the parents and the only child of the deceased. Claimant—Monisha, after the death of her husband, is stated to have remarried subsequently. On 1.9.2015, the claimant—Manisha/respondent No.4 made a statement before the Lok Adalat of this Court to the effect that she had no objection if her share in the compensation enhanced in this appeal is given to her daughter—appellant No.3. The application for additional evidence to produce on record copy of the petition for custody of the minor girl of the deceased between her grand parents and the mother as well as the compromise arrived at therein, has not been opposed by the respondents, therefore, keeping in view the statement of Monisha—respondent No.4 made before the Lok Adalat on 1.9.2015. The application for additional evidence has thus rendered infructuous and is disposed of accordingly. The enhanced amount in this appeal would now be payable to appellants No. 2 and 3 only i.e. mother and daughter of the deceased in equal share.

(JAISHREE THAKUR)
JUDGE

October 14, 2019

prem

Whether speaking/reasoned

Whether reportable

Yes

No