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

FAO No. 4669 of 2013 (O&M)
Date of decision : September 10, 2019

Smt. Sumindro Devi and others .....Appellants

Versus

Dr. Sushil Kapila and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Naveen Sharma, Advocate for
Mr. Vijay Lath, Advocate
for the appellants.

None for respondents No. 1 and 2.

Mr. Gopal Mittal, Advocate
for respondent No. 3.

***

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as the 'Tribunal') on account of death of Sandeep Singh Kajla alias Sanjiv Kumar vide award dated 25.04.2013.

Brief facts necessary for adjudication of the case are that the appellants/claimants i.e. parents and brother of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Sandeep Singh Kajla alias Sanjiv Kumar on 07.12.2011, in a motor vehicle accident which took place on 02.12.2011, caused due to rash and negligent driving of the offending vehicle i.e. Swift car bearing registration No. PB-54-D-5123 by respondent No.2. The deceased, aged 26 years at the time of the accident was stated to be a doctor employed at Chintpurni Medical College and Hospital, Bungal Badhani, Tehsil

Pathankot at a salary of ₹40,000/- per month.

Learned Tribunal on considering the evidence on record, facts and circumstances concluded that Sandeep Singh Kajla alias Sanjiv Kumar died in the accident which took place on 02.12.2011 due to rash and negligent driving of the offending vehicle i.e. Swift car bearing registration No. PB-54-D-5123 by respondent No. 2. Learned Tribunal while assessing the income of the deceased to be ₹3,30,000/- per annum and deducting a sum of ₹30,000/- per annum towards income tax, awarded a sum of ₹32,22,500/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till date of actual realisation of the award. 50% increment was afforded on account of future prospects. 50% deduction of was effected as the deceased was a bachelor. Multiplier of 13 was applied on the basis of the age of the parents of the deceased. Additionally, a sum of ₹5,000/- was awarded on account of funeral expenses.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that component of income tax has been wrongly deducted at a higher rate than what is applicable. Moreover, multiplier has been incorrectly applied. No compensation has been awarded for the expenses incurred on medical treatment of the deceased from 02.12.2011 to 07.12.2011 when he ultimately succumbed to his injuries and meagre compensation under the conventional heads has been awarded. It is, thus, prayed that compensation awarded to the claimants be enhanced.

Learned counsel for the insurance company submits that the component of income tax has to be calculated on income assessed after addition of the increment towards future prospects. It is further submitted that the expenses incurred on the medical treatment have not been proved in accordance with law, though it is not denied that the deceased remained admitted at Fortis hospital, Amritsar till 07.12.2011 when he ultimately succumbed to his injuries. It is submitted that the compensation has been rightly assessed, thus, impugned award dated 25.04.2013 be upheld.

I have heard learned counsel for the appellants as well as learned counsel for the insurance company and have gone through the record.

There is no dispute that Sandeep Singh Kajla alias Sanjiv Kumar lost his life due to injuries received by him in a motor vehicle accident, which took place on 02.11.2012 due to the rash and negligent driving of the offending vehicle. Finding of the learned Tribunal on this issue has attained finality. It is also not denied that the deceased, aged 26 years old at the time of the accident, had attained his MBBS degree from the Government Medical College and Hospital, Amritsar in June, 2011. He was employed as a Doctor at Chintpurni Medical College and Hospital, Bungal Badhani, Tehsil Pathankot. It is further a matter of record that the deceased was in receipt of salary of ₹30,000/- per month. The claimants have duly examined PW1 Alok Singal, Manager HR at Chintpurni Medical College and Hospital, Bungal Badhani. Salary certificate (Ex.P1) of the deceased as well as allotment letter (Ex.P3) were proved by him. Learned Tribunal while accepting the salary of the deceased to be ₹30,000/- per month i.e. ₹3,60,000 per annum held that a sum of ₹30,000/- per annum has to be deducted towards income tax, therefore, assessed the annual salary of the deceased to be ₹3,30,000/- (3,60,000-30,000). The controversy sought to be raised by the learned counsel for the insurance company is succinctly answered in the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009.** It is specifically observed therein that 'income' means actual income less the tax paid. Future prospects are to be added to the said sum on a percentage basis, as detailed in the said judgment. In this respect, it is specifically observed as under:-

> " At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage basis and "income" means actual income less than the tax paid."

Therefore, there is no merit in the argument raised by learned counsel for the insurance company. Income of the deceased, as assessed by the learned Tribunal, is thus upheld as ₹3,60,000/- per annum. In the relevant assessment year, income upto ₹1,80,000/- was exempted from income tax and a tax @ 10% was leviable for income from ₹1,80,000/- to ₹5,00,000/-. Therefore, the income tax leviable is ₹18,000/- and not ₹30,000/- as assessed by the learned Tribunal. After deducting a sum of ₹18,000/- per annum towards income tax returns, annual income of the deceased was ₹3,42,000/-. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 50% (₹1,71,000/-) is afforded, as the deceased was 26 years old at the time of accident, which takes income of the deceased to ₹5,13,000/- per annum. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi***

Transport Corporation and another 2009 (3) RCR (Civil) 77, 50% deduction has been correctly effected as the deceased was a bachelor, thereby rendering income of the deceased to be ₹256500/-(513000-256500). It has been held by the Hon'ble Supreme Court in ***Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347*** that the multiplier applied should be with reference to the age of the deceased and not of the parents. The deceased, in this case, was admittedly 26 years old and unmarried at the time of the accident, therefore, multiplier of 17 instead of 13 is to be applied. Applying a multiplier of 17, dependancy of the claimants is assessed as ₹43,60,500/- (₹256500x17). The claimants are also entitled to ₹15,000/- each for funeral expenses (instead of ₹5,000) and loss of estate. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333** and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others,** appellants No. 1 and 2 i.e. parents of the deceased are entitled to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹44,30,500/- detailed as under:-

Loss of dependency (₹256500x17)	₹43,60,500/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹44,30,500/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants are entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(Lisa Gill)
Judge

September 10, 2019
rts

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