IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2946 of 2015
Date of Decision: August 29, 2019

Kamlesh Rani and another

...... Appellants(s)

Versus

National Insurance Company and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Joginder Siwach, Advocate for
Mr. Rajeev Dev Sharma, Advocate
for the appellants.

Mr. Sandeep Suri, Advocate
for respondent no.1-insurance company.

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LISA GILL, J. (oral)

This appeal has been filed seeking enhancement of compensation awarded to the claimants vide award dated 09.10.2014, passed by learned Motor Accident Claims Tribunal, Pathankot (hereinafter referred to as 'the Tribunal).

Appellants-claimants who are the parents of the deceased Rakesh Kumar, filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Rakesh Kumar due to the injuries suffered by him in the motor vehicle accident, which took place on 09.03.2014. Deceased was admittedly working as a Constable

(Cook) with the office of The Commandant Shastra Sena Bal (SSB), 42 Bn. Batote, District Ramban (J&K).

Learned Tribunal on considering the evidence on record concluded that the accident in question indeed took place on 09.03.2014 due to the rash and negligent driving of the offending Maruti Swift car bearing registration No. PB-35-H-0091, by its driver Parshotam Singh-respondent No.3. Learned Tribunal while holding only appellant no.1 entitled to the compensation, awarded a sum of Rs.29,13,000/- as compensation, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income 27,895 x 12	3,34,740/- per annum
2.	Income after deducting the amount of Rs.10,000/- as income tax	3,34,740 - 10,000/- = 3,24,740 (rounded off to Rs.3,24,000/-)
3.	Income after deducting 50% on account of personal and living expenses of the deceased.	3,24,000 – 50% = 1,62,000/-
4.	Dependency after applying multiplier of 17	1,62,000 x 17 = 27,88,000/-
5.	Funeral expenses to claimant no.1	25,000/-
6.	Loss of love and affection to claimant no.1	1,00,000/-
	Total	**29,13,000/-**

Present appeal has been filed seeking enhancement of the aforesaid compensation. Learned counsel for the appellants does not challenge the finding of the learned Tribunal holding only appellant no.1 entitled for compensation.

Learned counsel for the appellants submits that increment on account of future prospects should be awarded, though, it is fairly stated that compensation under the conventional heads be re-worked in terms of the judgment of Hon'ble Supreme Court **National Insurance Company Limited v. Pranay Sethi and others,** ***2017(16) SCC 680*** and ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors*. 2018(4) RCR Civil 333.** It is thus prayed that total compensation be enhanced.

Learned counsel for the insurance company, however, refutes the above said arguments while submitting that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no enhancement. It is submitted that income of the deceased has been wrongly assessed as Rs.3,34,740/- per annum while taking his monthly salary to be Rs.27,895/-. In fact the deceased was in receipt of monthly salary of Rs.23,216/-. Learned counsel raises this plea on the basis of an alleged pay slip for the month of February 2014. It is thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a matter of record that Rakesh Kumar was 27 years old at the time of the accident and was employed as a Constable (Cook) with the office of The Commandant Shastra Sena Bal (SSB), 42 Bn. Batote, District Ramban (J&K) as mentioned in the foregoing paras. As per Ex.P-1 i.e. the salary slip of the deceased for the month of January 2014, he was in receipt of monthly income of Rs.27,895/-. The purported pay slip (photocopy) for the month of February 2014 furnished in Court today is admittedly not a part of the record. The said pay slip is admittedly not an exhibited document and neither learned counsel for the respondent is able to point out the same from the available record. It is relevant to note at this stage that the claimants have duly examined PW-3 ASI Happy Sharma, No.127415, 42 Battalion, SSB, Batote, J&K who has specifically stated that the deceased was in receipt of monthly income of Rs.27,895/-. Ex.P-1 has been duly proved by the said witness and there is no evidence on record to doubt the veracity of the same. Income of the deceased is thus upheld to be Rs.27,895/- per month. Learned Tribunal has correctly deducted the amount of income tax and held the annual of the deceased to be Rs.3,24,740/- (rounded off to Rs.3,24,000/-). Keeping in view the judgment of the Hon'ble supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680,*** 50% increment has to be afforded on account of future prospects. Deduction of 50% was correctly effected by learned Tribunal. As the deceased was admittedly 27 years old at the time of the accident, multiplier of 17 was correctly applied by learned Tribunal. Instead of a sum of Rs.25,000/- awarded towards funeral expenses, appellant no.1 is entitled to a sum of Rs.15,000/- each towards funeral expenses and loss of estate. Instead of Rs.1,00,000/- awarded to appellant no.1 by the learned Tribunal on account of loss of love and affection, she is entitled to a sum of Rs.40,000/- on account of loss of filial consortium . Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*** **2018(4) RCR Civil 333**, as well as decision dated 14.03.2019 of this Court in FAO-2011-2016, title ***Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others***.

Appellant no.1 is, thus, entitled to compensation which is re-worked as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income 27,895 x 12	3,34,740/- per annum
2.	Income after deducting the amount of Rs.10,000/- as income tax	3,34,740 - 10,000/- = 3,24,740/- (rounded off to Rs.3,24,000/-)
3.	Income after deducting 50% on account of personal and living expenses of the deceased.	3,24,000 – 50% = 1,62,000/-
4.	Total income after addition at the rate of 50% on account of future prospects	1,62,000 + 81,000 (1,62,000 x 50%) = 2,43,000/-
5.	Dependency after applying multiplier of 17	2,43,000 x 17 = 41,31,000/-
6.	Loss of estate	15,000/-
7.	Funeral expenses	15,000/-
8.	Loss of filial consortium to appellant no.1	40,000/-
	Total	**Rs.42,01,000/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant-appellant no.1 shall be entitled to interest at the rate of 7.5% per annum on the entire amount, from the date of filing of the claim petition till realization.

Appeal is accordingly disposed of.

August 29, 2019. **(LISA GILL)**
Sunil **JUDGE**

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