

FAO NO.3748 OF 2015(O&M)

1

213

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO NO.3748 OF 2015(O&M)

Date of Decision: 02.05.2019

Bharti AXA General Insurance Co. Ltd., ChandigarhAppellant

versus

Amar Singh and othersRespondents

CORAM HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present Mr. Rajbir Singh, Advocate for the appellant.

Mr. Kunal Dawar, Advocate for respondents.

AVNEESH JHINGAN, J (Oral)

The award dated 09.02.2015, passed by Motor Accident Claims Tribunal, Faridabad (for short 'the Tribunal') has been assailed by the insurer of trola bearing registration No.HR-69A-9797 (for short 'offending vehicle') being aggrieved against the quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the Tribunal.

The brief facts necessary for adjudication of the present appeal are that on 26.09.2013, Akash Kumar, aged 25 years was coming from Gurgaon to Faridabad on a motorcycle bearing registration No. HR-51AK-5230. On his way, the offending vehicle rammed into his motorcycle and Akash Kumar sustained grievous injuries, which proved fatal. He was shifted to Asian Hospital, Faridabad, where he was declared brought dead. FIR No.432 dated 27.09.2013 was registered against respondent no.1 under

Sections 279, 304-A and 427 IPC at Police Station Surajkund.

A claim petition under Section 166 of the Act was filed by the parents and unmarried sister of the deceased. In the claim petition, it was pleaded that deceased was working as a Sales Executive in M/s DHFL Sales and Services Ltd, his salary was claimed as ₹20,000/- but as per the salary certificate exhibited he was getting salary of ₹11,000/- and in the month of September 2013, he received an amount of ₹13,000/-, which included ₹2,000/- for sale incentive.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was result of rash and negligent driving of the offending vehicle. The insurer of the offending vehicle was held liable to pay compensation. The Tribunal assessed the monthly earnings of deceased as ₹13,000/-; 50% future prospects were awarded; 1/3rd deduction for self expenses was made; total sum of ₹29,58,000/- was awarded including ₹1,00,000/- for loss of love and affection and ₹50,000/- for funeral expenses. The Tribunal ordered that the claimants shall be entitled to interest @ 9% per annum from the date of filing of the petition if the payment is made within sixty days from the date of passing of award and in case insurer fails to make the payment within 60 days, the interest rate would be 12% per annum.

Heard learned counsel for the parties and perused the relevant documents produced by them.

Learned counsel for the appellant argues that the Tribunal erred in assessing the monthly earning of deceased as ₹13,000/-. To buttress his argument, he relies upon the pay slips of the deceased for the period from

July 2013 to September 2013 and states that the salary of the deceased was ₹11,000/- and only in the month of September 2013, an amount of ₹13,000/- was paid as he was awarded the sale incentive of ₹2,000/-. He also lays challenge to awarding of 50% as future prospects. He relies upon the deposition of PW4 Pankaj Sharma, Branch Manager of M/s DHFL Sales & Service Ltd. Faridabad and appointment letter wherein it was mentioned that Akash Kumar was being appointed on contract basis for fixed tenure i.e from 03.06.2013 to 02.06.2014.

It is further argued that out of ₹11,000/-, ₹800/- is towards conveyance allowance which is a reimbursement of the expenses. The grievance is that the deceased was unmarried and, therefore, $\frac{1}{2}$ deduction for self expenses should have been made instead of $\frac{1}{3}$ rd. He further argues that the amount under the conventional head be awarded, as per the decision of Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157**, and no amount be awarded for loss of love and affection.

Learned counsel for the claimants contends that the deceased was survived by parents and a young unmarried sister and from the type of job he was doing, it is established that he was from that strata of society where a youth will not be able to spend 50% of salary for personal expenses. Counsel for claimants states that the Tribunal correctly applied $\frac{1}{3}$ rd deduction as self expenses as deceased was survived by parents and young unmarried sister. He defended the award but could not raise any serious objection with regard to the fact that deceased was on contract basis and was receiving conveyance allowance.

From the perusal of the pay slips, it is forthcoming that from July 2013 onwards, the deceased was receiving salary of ₹11,000/-. It was only in September, 2013 that sale incentive of ₹2,000/- was paid to him. There is nothing on the record to show that sale incentive was recurring and was to be paid regularly. As per the pay slips, apart from the basic salary various allowances constituted the salary. It is evident that all the allowances were fixed and were being paid every month, only the conveyance allowance cannot be made part of the salary as it was the reimbursement of the expenses being spent for conveyance for the duty purposes.

For the reasons mentioned above, monthly income of the deceased is taken as ₹11,000/- and ₹800/- received for conveyance allowance is deducted i.e compensation shall be calculated by considering his salary as ₹10,200/-.

From the perusal of the appointment letter, it is forthcoming that the appointment was for a fixed tenure; the deceased cannot be considered having a permanent job. In view of the decisions of the Supreme Court in Pranay Sethis's case (supra) and Hem Raj Vs.Oriental Insurance Company Ltd. 2018 (2) PLR 480; 40% future prospects are awarded.

As quantum of compensation is revisited, the amount under the conventional head are awarded as per decision of Supreme Court in Pranay Sethi's case (supra). The claimants are entitled to ₹15,000/- each for loss of estate and funeral expenses.

The Supreme Court in case of Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21, has given a

table for deduction to be made of self expenses. In case of bachelor, $\frac{1}{2}$ deduction is to be made for self expenses. It is a general rule but it was held that in cases where there are reasons to deviate from the said deduction, the Courts can do so. Supreme Court in Pranay Sethi's case (supra) while concurring with the decisions of Supreme Court in Sarla Verma's case (supra), Munna Lal Jain and another v. Vipin Kumar Sharma and others 2015(3) RCR (Civil) 447 and Reshma Kumari and others v. Madan Mohan and another (2013)9 SCC 65, has held as under:-

“39. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, Sarla Verma lays down:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra 4, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

As per para 32, the personal and living expenses may be

restricted in case of a bachelor to 1/3rd in certain cases. In the present case, the deceased was survived by parents and unmarried sister aged 22 years. Pleadings and the evidence adduced is a pointer to the fact that the deceased belonged to a strata of society where there being an unmarried sister at home he may not be in a position to spend 50% for his personal expenses. In such circumstances, it would not be deemed appropriate to interfere with the 1/3rd deduction made for self expenses by the Tribunal.

The Supreme Court in case of **Oriental Insurance Co. Ltd. v. Deo Patodi and others, (2009)13 SCC 123** has held as under:-

“14. Indisputably, deduction of 1/3rd towards personal expenses is the ordinary rule in India. We think that in the facts and circumstances of the case, the same should be applied. The concept of joint family unlike the western countries where it has been wholly evaporated, although on the decline, should also be taken into consideration. The deceased's father was a Doctor working in a Government Hospital; he was aged about 51 years at the time of the accident; he would have retired from the Government job after a few years. He might not, therefore, be completely dependent upon his son. We, therefore, are of the opinion that having regard to his age as also the age of his wife multiplier of 10 should be applied. We do so keeping in view the fact that the Court has a duty to grant a just and reasonable compensation. What would, however, be a just and reasonable compensation depends upon the fact situation obtaining in each case. No hard and fast rule therefor can be laid down. The Court must also bear in mind that compensation should not be treated to be wind-fall.”

Considering the facts of the present case, the compensation is calculated as below:-

	<i>Head</i>	<i>Compensation awarded in ₹</i>
<i>i</i>	<i>Monthly Income assessed by Tribunal</i>	<i>10,200/- per month</i>
<i>ii</i>	<i>Future prospects at 40%</i>	<i>4080/- per month</i>
<i>iii</i>	<i>Total Income</i>	<i>14,280/-per month</i>
<i>iv</i>	<i>Deduction of 1/3rd for personal expenses</i>	<i>4760/-</i>
<i>v</i>	<i>Multiplier</i>	<i>'18' (as per age of deceased)</i>
<i>vi</i>	<i>Loss of income</i>	<i>9520X12X18= 20,56,320/-</i>
<i>vii</i>	<i>Funeral expenses</i>	<i>15,000/-</i>
<i>viii</i>	<i>Loss of estate</i>	<i>15,000/-</i>
<i>ix</i>	<i>Total Compensation awarded</i>	<i>20,86,320/-</i>

The Tribunal erred in awarding conditional interest. The Supreme Court in '**National Insurance Co. Ltd. v. Keshav Bahadur and others, (2004)2 SCC 370**', held as under :

“Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the

discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from the particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore, directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.”

It was held that direction for retrospective enhancement of interest in case of non payment results in an action not enabled by Act.

While issuing notice of motion on 23.07.2015, the following order was passed by this Court:-

“XXXXXXXX

In the meanwhile, the Insurance Company is directed to deposit Rs.25,00,000/- before the Tribunal, which shall be reimbursed to the claimants. The remaining amount of compensation shall remain stayed.”

Hence, the award dated 09.02.2015 is modified to the extent that amount of ₹29,58,000/- awarded by the Tribunal is reduced to ₹20,86,320/-. The claimants shall be entitled to the said amount alongwith interest @ 9% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

02.05.2019
mamta

(AVNEESH JHINGAN)
JUDGE

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