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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.3641 of 2016
Date of Decision : 08.04.2019

Manjeet Kaur and others

Appellants

Versus

Jassa Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. K.B.S. Mann, Advocate
for the appellants.

Mr. R.C. Kapoor, Advocate
for the respondent-Insurance Company.

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AVNEESH JHINGAN, J (Oral)

The award dated 30.11.2015 passed by the Motor Accident Claims Tribunal, Bathinda [for brevity 'the Tribunal'] has been assailed by widow and two minor children of Jasvir Kumar.

The driver, owners and insurer (i.e. National Insurance Company Ltd.) of Bus bearing registration No. PB-03AA-9417 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 4 and mother of the deceased has been arrayed as proforma respondent No.5 in the appeal.

The facts emanating from the record are that on 11.03.2014, Jasvir Kumar alongwith his wife Manjeet Kaur and brother-in-law, was standing near Multania Bridge on the left side of the road. At that time, the offending vehicle came at a very high speed and struck against Jasvir Kumar. As a result of the impact, he fell down, his head was crushed beneath the tyre of the offending vehicle and he died at the spot. FIR No.33, dated 11.03.2014 was registered at Police Station Canal Colony, Bathinda.

In the claim proceedings, it was pleaded and proved that the deceased was 41 years old. He was working as Head Constable with Punjab Police and was drawing salary of ₹36,795/-. The Tribunal awarded 30% future prospects, 1/4th deduction for self-expenses was made and multiplier of '14' was applied. The Tribunal calculated compensation of ₹61,52,000/-. The amount calculated included ₹1,00,000/- for loss of consortium and ₹25,000/- for funeral expenses. There is totalling error in the award and the amount has been mentioned as ₹61,25,000/- in the award. The Tribunal, thereafter, relying upon the decision of this Court in case of ***Poonam Paul and others Vs. State of Uttaranchal through Secretary Transport Department, Governemnt of Uttaranchal, Dehradun and another, 2010(33) RCR (Civil) 24,*** scaled down the compensation to ₹37,00,000/- along with interest @ 9% per annum. There was further condition imposed that in case the payment is not made within two months, the claimants shall be entitled to the interest @ 12% per annum from the date of passing of the award till actual payment.

The Tribunal considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The insurer of the offending vehicle was held liable to pay the compensation.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellants contends that the Tribunal wrongly scaled down the compensation calculated by it.

Learned counsel for the insurer argues that salary of the deceased has wrongly been considered as ₹36,795/- as various allowances which were in shape of reimbursement, like ration money, mobile allowance etc., were there, which should be deducted. The grievance raised is that income tax payable is not deducted and amounts awarded under the conventional heads are on the higher side.

The contention raised by learned counsel for the appellants raising grievance against scaling down the compensation is well founded. The Supreme Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21*** and thereafter five-Judge Bench of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157,*** has time and again held that in order to arrive at just and equitable compensation, multiplier method is to be applied.

There is no dispute with regard to 30% future prospects, being in consonance with the decision of the Supreme Court in ***Pranay Sethi's case*** (supra). The claimants shall be entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

Further there is no dispute to the 1/4th deduction made for self-expenses and multiplier applied of '14' as per decision of the Supreme Court in ***Sarla Verma's case*** (supra).

Once the compensation is calculated by the Tribunal by applying multiplier method, there would be no occasion for the Tribunal or this Court to scale it down. The Tribunal erred in relying upon the decision of this Court in ***Poonam Paul's case*** (supra). In that case, the compensation was scaled down considering the fact that the deceased was survived by parents and unmarried sister only. In the present case, the deceased was survived by young widow, two minor children and old mother, he was sole bread earner and claimants were totally dependent on the deceased. It would not be fair to hold that compensation calculated considering the salary of the deceased and thereafter calculating the same as per guidelines laid down by the Supreme Court would result in a windfall to the legal representatives of the deceased. It would be a challenge for the widow to bring up two minor children without husband.

No case is made out for scaling down the compensation. From perusal of the exhibits, it is evident that gross-salary of the deceased for the month of February, 2014 was ₹36,795/-. From the details of the components of the salary, it is forthcoming that atleast four allowances were there with regard to reimbursement of the expenses, which totals to ₹800/-. The same are deducted for considering the salary for calculating compensation. After deducting the said amount, salary for compensation is considered as ₹36,000/-. As per decision of the Supreme Court in ***Manasvi Jain vs. Delhi Transport Corporation, (2014)3 SCC 22,*** income tax payable is to be deducted while considering the salary for calculating the compensation. Relevant para of the decision of the Supreme Court is reproduced 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."*

There is nothing on record to calculate the exact tax payable, considering the nil tax slab for the relevant financial year, a sum of ₹15,000/- is deducted as income tax payable.

In view of above discussion, the compensation is re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	36,000/-
Annual earning	4,32,000/-
Less : Income Tax Payable	(-) 15,000
Net Income	4,17,000/-
30% future prospects	1,25,100/-
Sub Total	5,42,100/-
1/4th deduction for self-expenses	1,35,525/-
Loss of dependency	4,06,575/-
Applying multiplier of '14'	**56,92,050/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**57,62,050/-**

The award dated 30.11.2015 is modified to the extent that the claimants shall be entitled to ₹57,62,050/-.

The claimants have already received ₹37,00,000/- alongwith interest as awarded by the Tribunal. Now they shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition, till realization of the amount.

The appeal is partly allowed.

[AVNEESH JHINGAN]
JUDGE

April 08, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes