IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 85 of 2014
Date of decision: 12.4.2019

Kulwinderpal Singh

.. Appellant

v.

Rajan Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.S. Shukla, Advocate for the appellant.
Mr. R. N. Singhal, Advocate for the Insurance Company.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 9.5.2013 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib (for short, 'the Tribunal') has been assailed by the husband of Smt. Manpreet Kaur (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The driver, registered owner and insurer (i.e. United India Insurance Company) of Tipper-truck bearing registration No. PB-11-AM-8423 (hereinafter referred as 'offending vehicle') have been arrayed as respondents No. 1 to 3 respectively in the appeal. Parents and father-in-law of the deceased have been arrayed as proforma respondents No. 4 to 6.

The factum of accident is not disputed by the parties. A motor vehicular accident took place on 10.10.2010. The accident proved fatal for

Manpreet Kaur aged 25 years. The accident was result of rash and negligent driving of the offending vehicle. The owner, driver and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim petition, it was pleaded that the deceased was earning 200/- per day by helping her husband in the business of manufacturing of small parts of sewing machine. The claimants failed to prove the occupation and earning of the deceased. The Tribunal assessed the monthly earning of the husband of the deceased as ₹4,500/- and took 1/3rd of the said amount as income of the deceased. Multiplier of '11' was applied. The Tribunal awarded a sum of ₹2,18,000/-. The amount awarded included ₹10,000/- for loss of consortium, ₹5,000/- for funeral expenses and ₹5,000/- for loss of love and affection.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellant argues that the income assessed by the Tribunal is on the lower side and the same is much less than the minimum wages prevalent in the State at the time of accident. His grievance is that multiplier of '11' has wrongly been applied by not considering the age of the deceased. He further argues that the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer argues that the claimants failed to prove the occupation and earning of the deceased and the income has rightly been assessed.

The claimants failed to prove the occupation and monthly earning of the deceased. There is no serious dispute raised to the fact that she was a house maker. Contribution of a house maker in Indian society cannot be under estimated. She has multifarious roles in the family. The Supreme Court in **Jitendra Khimshankar Trivedi and others v. Kasam Daud Kumbhar and others, (2015) 4 SCC 237** held as under:

> "Even assuming Jayvantiben Jitendra Trivedi was not self employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A housewife/home-maker does not work by the clock and she is inconstant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

Having a clue from the minimum wages at the time of accident, notional monthly income of the deceased is assessed as ₹3,700/-. As the notional income is being assessed, no deduction for self-expenses is to be made. This Court in **Paramjit Singh and another v. Dilbagh Singh alias Bagga and others, 2013 (4) PLR 328** held as under:

> "15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs. 3,000/- per month if she had been between the age group of 34 to 59 at the time of

accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

The Tribunal erred in applying the multiplier by not considering the age of the deceased. The issue regarding application of multiplier considering the age of the deceased is no longer *res-integra.* The Supreme Court in **Sube Singh and another v. Shyam Singh (dead) and others, (2018) 3 SCC 18** has held as under:

"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.9.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more *res integra*. In the case of Munna Lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."

(emphasis supplied)

The Supreme Court in its recent decision in **Civil Appeal No. 6600 of 2015- M/s Royal Sundaram Alliance Insurance Company Ltd. v. Mandala Yadagari Goud and others, decided on 9.4.2019** has reiterated this fact and held as under:

"9. The focus for determination of such claim is the deceased and what would be his contribution towards the dependents would he to be alive, for the benefits of the dependents. It is trite to say, and in fact conceded by the learned counsel for the insurance company, that in case the deceased is a married person, it is the age of the deceased which is to be taken into account. The question is whether in case the deceased is a bachelor, a different principle for calculation of the multiplier should be applied by shifting the focus to the age of the claimants? We are of the view that the answer to this question should be in the negative.

10. We may also note the importance of applying uniform settled principle to such cases. Certainty of law is

important. Once the law is settled, it should not be repeatedly changed as that itself causes confusion and litigation. It is with this objection that this Court has endeavoured to settle legal principles in respect of the matter in question.

11. A reading of the judgment in Sube Singh (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on: (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law

> settled in Sarla Verma case in this behalf.
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> 12. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.
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> 13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

In the pleadings, it was pleaded that the deceased was 26 years of age, in the post-mortem report, the age has been mentioned as 25 years. There is no other proof on the record to establish the age of the deceased. Considering the age of the husband and taking into consideration the pleadings, the deceased is considered in the age group of 26-30 years and multiplier of '17' is to be applied.

In consonance with the decision of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157**, the claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- is awarded for loss of consortium to the spouse.

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

Head	***Compensation awarded in ₹***
Monthly income	3,700/-
Multiplier	17
Loss of income	3,700x12x17 = 7,54,800/-
Funeral expenses	15,000/-
Loss of estate	15,000//-
Loss of consortium	40,000/-
Total compensation awarded	8,24,800/-

The award dated 9.5.2013 is modified to the extent that amount of ₹2,18,000/- awarded by the Tribunal is enhanced to ₹8,24,800/-.

The claimant shall be entitled to the enhanced amount along with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

12.4.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No