IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 7358 of 2016 (O&M)
DECIDED ON: JANUARY 29, 2019

THE ORIENTAL INSURANCE COMPANY LTD.

.....APPELLANT

VERSUS

KHAJANI AND OTHERS

.....RESPONDENTS

AND

FAO No. 399 of 2017 (O&M)

KHAJANI AND OTHERS

.....APPELLANTS

VERSUS

SAMUNDER SINGH & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vinod Chaudhri, Advocate
for the appellant-Insurance Company

Mr. Kamal Kumar Yogi, Amicus Curiae and
Mr. Chetan Kapoor, Advocate for
Mr. Vikram Singh, Advocate
for the claimants.

AVNEESH JHINGAN J. (ORAL)

The award dated 08.08.2016 passed by the Motor Accident Claims Tribunal, Panipat (for brevity 'the Tribunal') has been assailed in two appeals.

One appeal is by the insurer of car bearing registration No. HR-11-D-0959 (hereinafter referred to as 'offending vehicle') and another by the claimants i.e. FAO No. 7358 of 2016 and FAO No. 399 of 2017, respectively.

The afore-said two appeals are being disposed of by a common order as both the appeals have arisen out of the same accident and same award.

The brief facts necessary for adjudication of the present appeals are that on 07.12.2014, Parminder Kumar alongwith his friend Rahul was coming from Ganaur to Panipat on a motorcycle bearing registration No. HR-06-K-8752. The motorcycle was being driven by Parminder Kumar. On the way the motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Parminder Kumar sustained grievous injuries and was taken to Government Hospital, Panipat from where he was referred to PGI, Khanpur where he was declared dead. FIR No. 1562, dated 08.12.2014 was registered at Police Station City, Panipat.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the claimants. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to the rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

It was pleaded by the claimants in the claim petition that the deceased was B.Tech (Electronics & Communication Engineering) and was working with M/s Shubham Facilities Management Pvt. Ltd. and was drawing monthly salary of ₹14,000/-. But the claimants failed to substantiate the monthly income of the deceased as neither employee nor authorized agent deposed before the Tribunal. The deceased was survived by his parents and an unmarried sister, who suffers 70% permanent disability. The Tribunal assessed the monthly income of the deceased as ₹12,000/-, 1/3rd deduction was made for self-expenses, 50% future prospects were awarded and a multiplier of 18 was applied. The Tribunal awarded a compensation of ₹27,07,000/- alongwith interest @7.5% per annum. The amount awarded included ₹1,00,000/- for loss of love and affection, ₹5,000/- for funeral expenses and ₹10,000/- for litigation expenses.

The claimants have also filed an appeal i.e FAO No. 399 of 2017 seeking enhancement of compensation but they were not being represented by any counsel, hence, vide order dated 07.12.2018, Mr. Kamal Kumar Yogi, Advocate was appointed as Amicus Curiae to assist this Court on behalf of respondents-claimants. The fee to Amicus Curiae shall be paid by Legal Services Committee of this Court.

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

Learned counsel for the insurer argues that the Tribunal erred in making 1/3rd deduction for self-expenses instead of 1/2, as the deceased was a Bachelor. He further argues that 50% future prospects have wrongly been awarded by the Tribunal as the claimants failed to prove that the deceased was having a permanent job. The grievance is that the amounts awarded under the conventional heads are on the higher side and no amount should be awarded for loss of love and affection.

Learned counsel for the claimants contends that the deceased was survived by his parents and unmarried sister having 70% permanent disability, which was proved vide Ex.P-6, in such circumstances, the Tribunal has rightly made 1/3rd deduction for self-expenses. No serious objection was raised with regard to 40% future prospects to be awarded, in view of the decision of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009.***

There is no dispute in between the parties with regard to monthly income of the deceased assessed by the Tribunal as ₹12,000/-, age of the deceased and the multiplier of 18.

Having due regard to the decision of the Supreme Court in ***Pranay Sethi's*** case (supra) and ***Hem Raj vs. Oriental Insurance Company* Ltd; *2018 (2) PLR 480;***, 40% future prospects are awarded. Claimants are entitled to ₹15,000/- each on account of funeral expenses and loss of estate. No amount can be awarded for loss of love and affection.

The contention raised by the learned counsel for the insurer that the Tribunal erred in making 1/3rd deduction for self-expenses, as the deceased was unmarried is not well founded. The Supreme Court in case of ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another; (2009) 6 SCC 121,*** has held that in case of a bachelor 1/2 deduction for self-expenses has to be made. The table of deduction for self-expenses mentioned in ***Sarla Verma's*** case (supra) and is to be followed by and large except in the cases where the facts and circumstances are such that departure is to be made. The Supreme Court in case of ***Reshma Kumari v. Madan Mohan,*** **(2009) 13 SCC 422,** approved the decision of ***Sarla Verma's*** case (supra) but it was held that :-

"41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

*42. In our view, the standards fixed by this Court in Sarla Verma on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the p*receding paragraph is made out."

The Five Judges' Bench in ***Pranay Sethi's*** case (supra) concurred with the view taken in ***Sarla Verma's*** case (supra) and considered in ***Reshma Kumari's*** case (supra). It was held that:

"42. The conclusions that have been summed up in Reshma Kumari are as follows:-

"43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in Sarla Verma read with para 42 of that judgment.

43.2. In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma should be followed.

43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims

Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death.

43.5. While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in Sarla Verma.

43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 41 above."

In the present case the Tribunal has given reasoning for applying 1/3rd deductions for self-expenses. Taking into consideration that once there is an unmarried sister who has 70% disability in such family circumstances brother would not be spending 1/2 for his personal expenses. No interference is called for with regard to 1/3rd deduction made for self-expenses.

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

	Head	**Compensation awarded**
(i)	Income	₹ 12,000/- per month
(ii)	Future prospects at 40%	₹ 4800/- per month
(iii)	Total Income	₹ 16,800/- per month
(iv)	Deduction of personal expenses	₹5600/- (i.e. 1/3rd of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	11,200x12x18= ₹24,19,200/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Litigation Expenses	₹10,000/-
	Total Compensation awarded	₹24,59,200/-

The award dated 08.08.2016 is modified to the extent that amount of ₹27,07,000/- awarded by the Tribunal is reduced to ₹24,59,200/-. While issuing notice of motion in FAO No. 7358 of 2016, disbursement of compensation beyond ₹20,00,000/- was stayed. The appellants shall be entitled to the remaining amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

Both the appeals are disposed of, in afore-said terms.

(AVNEESH JHINGAN)
JUDGE

JANUARY 29, 2019
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No