

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4663-2014
Date of decision: 17.07.2019

Harwinder Kaur and others

...Appellants

V/s.

Sanjay Kumar Chadda and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Munish Gupta, Advocate for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No. 3.

RITU BAHRI, J. (Oral).

The claimants have come up in appeal against the award of the Motor Accident Claims Tribunal dated 03.12.2013 whereby compensation of Rs.17,42,000/- has been awarded to the claimants on account of death of Tarsem Singh who died in a road accident which took place on 02.12.2012. The parties are not in dispute with regard to finding on issue no. 1. This finding has been rightly given in favour of the claimants as the FIR No. 178 dated 03.12.2012 under Sections 279, 304-A and 427 IPC was registered against the driver/respondent No. 1. Tarsem Singh was shifted to Civil Hospital, Hoshiarpur and thereafter he was shifted to Oxford Hospital, Jalandhar where he succumbed to his injuries. The bills Exs. A-11, A-12 and A-16 are with respect to his treatment in the above said hospitals.

The Tribunal had assessed the income of the deceased Rs. 1,79,100/- per annum as per the income tax return (Ex. A-5) and after giving

benefit of future prospect, income had been taken as Rs.2,10,000 per annum and assessed the compensation as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income including future prospects	Rs.2,10,000
(ii)	1/3 rd (ii) above is deducted as personal expenses of the deceased	2,10,000-70,000=1,40,000
(iii)	Deduction of income tax	1,40,000-10,000=1,30,000
(iv)	Multiplier of 13 is applied	1,30,000X13=Rs.16,90,000
(v)	Funeral expenses	Rs.15,000/-
(vi)	Loss of estate	Rs.10,000
(vii)	Loss of consortium	Rs.10,000/-
(viii)	Transportation	Rs.3,000/-
(ix)	Medical bills	Rs.14,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs. 17,42,000/-

Hence, the claimants were found entitled to total compensation of Rs.17,42,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

Learned counsel for the appellants has argued that the accident took place on 02.12.2012 and the claimants have led sufficient evidence to show that before the date of death, he was employed with M/s. Delhi Apartment Private Limited and was earning Rs.20,000/- p.m. He has further stated that the Tribunal had accepted the evidence with regard to his income, however did not proceed to take the income of Rs.20,000/- only on the ground that initially the deceased was on probation for a period of six years from the date of joining and in case the working of deceased was not found satisfactory, he could have been shunted out from service earlier also.

Learned counsel for the insurance company at the same time has argued that the Tribunal has rightly taken the income from the income

tax returns Ex. A-5 for the assessment year 2012-13 as Rs.1,79,100 as this was the proven income of the deceased before his death. With respect to his employment with M/s. Delhi Apartment, the Tribunal had rightly rejected the claim as employee from this Company as AW-5 Rakesh Kumar had stated that he used to give salary of Rs.20,000/- per month to the deceased Tarsem Singh after obtaining signature of the concerned employee. However in the bank statement, there is no entry to this effect. A perusal of the statement made by AW-5 from the record of the Tribunal shows that he had produced the appointment letter (Ex. A-26) and Tarsem Singh was the regular employee of the Delhi Apartments Pvt. Ltd. Copy of the attendance sheets were produced as Ex.A-27 and certificate of his salary being Rs.20,000 per month was produced as Ex. A-28. In the cross-examination of AW-5, he has stated that Tarsem Singh had past experience of 26 years in the field of building construction and with regard to his appointment on regular basis, there is no dispute that he was not a regular employee. The only reason given by the Tribunal to discard his income as Rs. 20,000/- was that there is no evidence to show that his probation period was successful. Once the deceased had experience of 26 years, the salary of Rs.20,000/- as per salary certificate Ex. A28 has to be taken into account for assessing the compensation as the salary for April 2012 to November, 2012. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed by Hon'ble the Supreme Court in ***Magma General Insurance Company Ltd. V/s. Nanu Ram Alias Chuhru Ram and others***, Civil Appeal No. 9581 of 2018 and ***National Insurance Company Limited Vs. Pranay Sethi and***

others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	20,000 p.m.
(ii)	25% of (i) above to be added as future prospects	20,000+5000=25000
(iii)	Annual dependency	25,000X12=3,00,000
(iv)	Deduction of 10% income tax	3,00,000-30,000=2,70,000
(v)	1/4 th deduction of personal expenses	2,70,000-67,500=2,02,500
(vi)	Multiplier of 13 applied	2,02,500=26,32,500
(vii)	Medical bills	14,000
(viii)	Funeral expenses	15,000
(ix)	Loss of estate	15,000
(x)	Loss of Filial Consortium	Rs.1,60,000/- (Rs.40,000/- each to all the appellants)
(xi)	TOTAL COMPENSATION AWARDED	Rs. 28,36,500/-
(xii)	ENHANCED AMOUNT OF COMPENSATION	Rs.28,36,500-17,42,000 = Rs.10,94,500/-

The enhanced amount of compensation of **Rs.10,94,500/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of *Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others*, Civil Appeal No. 4528 of 2019. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is allowed.

(RITU BAHRI)
JUDGE

17.07.2019

Divyanshi

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No