IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

207 **FAO No.294 of 1995 (O&M)**
Date of Decision : 22.07.2022

Gurmeet Kaur and Ors. ....Appellants

VERSUS

Pritpal Singh and Ors. ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jatinder Nagpal, Advocate for the appellants.

Mr. Gopal Mittal, Advocate for respondent no.3.

ALKA SARIN, J. (Oral)

The present appeal has been preferred by the claimants against the award dated 24.10.1994 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the 'Tribunal') vide which three claim petitions were decided. The present appeal has been filed by Gurmeet Kaur and others, the claimants in **MACT No.111/65T of 03.08.90/91**.

The facts *qua* the accident are not in dispute. The only argument raised by learned counsel for the appellants is that income of the deceased, who was a lawyer, has been taken on the lower side i.e. Rs.1666/- per month. It is further the contention that the deceased used to spend an amount of Rs.12000/- per month for domestic expenses and Rs.5000/- on himself. It is also contended that a car had been purchased by the deceased 6 to 7 months prior to the accident, which was valued Rs.80,000/-. It is further contended that income of the deceased, as claimed by the claimants, has not been taken into account.

Per contra learned counsel for respondent no.3-Insurance Company has contended that there was no evidence *qua* the income of the deceased. In fact income tax returns of the deceased were not produced and mere diary entries cannot be relied upon while assessing the income of the deceased.

I have heard the learned counsel for the parties.

In the present case the Tribunal while assessing the income of the deceased has not taken into account the fact that the car, which the deceased was driving, was purchased by him 6 to 7 months prior to the accident and which car was valued Rs.80,000/-. The deceased was a practicing lawyer and as per diary entries produced by his clerk, namely, Malkit Singh, who appeared as PW-10, number of cases were reflected therein. It is further the contention that PW-10, Malkit Singh, had clearly stated that the deceased used to earn Rs.15,000/- to Rs.20,000/- per month from the profession.

This Court is handicapped inasmuch as the record of the present case was completely burnt during a fire incident which took place in the High Court Registry. Despite the best efforts of the counsel, they have not been able to reconstruct the record of the present case and only the paper-book of the present appeal has been reconstructed.

Keeping in view the fact that the deceased was an Advocate and had been practicing since 1981 till his death and un-rebutted testimony of PW-10, Malkit Singh, as well as the diary entries produced by PW-10, I deem it appropriate to assess the income of the deceased as Rs.10,000/- per month. It is further noticed that the multiplier, keeping in view the age of the deceased who was 40 years of age, has wrongly been taken as 16 which ought to have been taken as 15. Further, as per the law laid down by the Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay**

Sethi & Ors. [(2017) 16 SCC 680], **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [2009(6) SCC 121]** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]**, an addition of 25% is to be made towards the future prospects and a deduction of 1/3rd is to be applied as there are three family members of the deceased as his mother has since expired. In view of the settled law, the appellants-claimants would be entitled to the enhanced compensation as well as compensation under the conventional heads. They are also entitled to 10% increase under the conventional heads as well as under the head consortium as per the law laid down in **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642].** The modified compensation is re-worked out as under :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased	[10000 x 12] = Rs.1,20,000
2	Annual dependency of the claimants after deduction of 1/3rd	[120000 - 40000] = Rs.80,000
3	Future Prospects @ 25%	[80000 + 20000] = Rs.1,00,000
4	Multiplier of 15	[100000 x 15] = Rs.15,00,000
5	<u>Loss of Consortium</u> (i) Parental (2 children) (ii) Spousal	 Rs.88,000 (44000 x 2) Rs.44,000 (Total Rs.1,32,000)
6	Loss of Estate	Rs.16,500
7	Funeral Expenses	Rs.16,500
	Total Compensation	**Rs.16,65,000/-**
	Amount Awarded by the Tribunal	**Rs.3,20,000**
	Enhanced amount	**Rs.13,45,000**
	Compensation on account of damage to the car	**Rs.50,000**

The amount awarded towards damage of the car shall be maintained.

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 9% from the date of the award till the realization of the entire amount. The amount shall be apportioned between the claimant-appellants as directed by the Tribunal.

In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

22.07.2022
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO