IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 4765/2004 (O&M)

Date of decision: November 17,2022.

Smt. Sarla Devi

……….Appellant

Vs.

Sunil Kumar and others

……….Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Kulvir Narwal, Advocate for the claimant/appellant.

Mr. Ravinder Arora, Advocate for the respondent-Insurance Company.

Nidhi Gupta,J.

This appeal has been filed by the claimant/appellant seeking enhancement of the compensation awarded by the Motor Accident Claims, Tribunal, Rohtak (for short 'the Tribunal'), vide Award dated 3.5.2004 on account of death of Ranbir Singh. The Claimants, being widow and mother of the deceased, preferred a claim petition No. MACT Case No. 27 of 2003 under Section 166 of the Motor Vehicles Act,1988 (for short 'the Act') seeking compensation on account of death of Ranbir Singh in a motor vehicular accident. At the time of his death deceased Ranbir Singh was working as Head Constable in Border Security Force and was posted in Samba in J&K and drawing a salary of Rs.11,000/- per month.

Learned Tribunal on considering the evidence on record and pleadings of the parties concluded that Ranbir Singh died due to injuries suffered by him in a motor vehicular accident that took place on 15.4.2003 due to rash and negligent driving of the offending Car bearing registration No.HR-12D-7071, being driven by its Driver Sunil Kumar-respondent no.1.

Learned Tribunal computed the compensation admissible to the claimants as follows:

> Taking the basic pay is deceased Ranbir Singh as Rs.7444/- per month, deduction of of Rs.1298/- was made towards City Allowance, CEA, Regular Medical allowance, Washing allowance and other allowances, and therefore, the salary of deceased Ranbir Singh, for purposes of computing compensation, was taken as Rs. 6146/- per month.
>
> After deducting 1/3rd of the salary as personal expenses, the monthly dependency of the claimants was assessed at Rs.4097.33 (rounded off to Rs.4100/-).
>
> As per Matriculation certificate and the certificate issued by the Commandant, BSF, the date of birth of Ranbir Singh was proved as 5.9.1965 and therefore at the time of his death he was 37 years 6 months and 10 days old. Thus, the Tribunal applied the multiplier of 16. Thus, the claimants were held entitled to a total compensation of Rs.7,87,200/- (i.e. Rs.4100x12x16). Further, interest @ 9% per month was granted.

The compensation of Rs.7,87,200/- was directed to be disbursed in the following manner:-

Smt. Sarla Devi, widow of Ranbir Singh	Rs. 5,87,200/-
Smt. Sukhdei, mother of Ranbir Singh	Rs. 2,00,000/-

The Driver, Owner and Insurer of the offending car were held jointly and severally liable to pay the amount of compensation so awarded.

Prayer in the present appeal is for enhancement of the abovesaid compensation awarded to the claimants.

It has been argued by the learned counsel for the appellant that the Tribunal is in grave error in not awarding anything on account of future prospects, consortium, as well as other conventional heads like loss of estate, funeral expenses etc. It is further submitted by the counsel for the appellant that the finding of the Tribunal qua allowances being drawn by the deceased is to be set aside as the deceased was in disciplinary force and was getting meals and dress etc. for free. It is further submitted that the Tribunal has not awarded any amount on account of transportation. In view of inter alia, abovesaid facts and submissions, it is prayed that the compensation granted by the learned Tribunal be enhanced.

Learned counsel for the respondent-Insurance Company refutes the abovesaid arguments and prays for dismissal of this appeal though, it is not disputed that the deceased was serving as Head Constable in BSF and drawing a salary of Rs.7444/- per month.

I have heard learned counsel for the parties and perused the paper book carefully.

It is not disputed that Ranbir Singh died in a motor vehicular accident on 15.4.2003 due to rash and negligent driving of the aforesaid offending Car being driven by respondent no.1-Sunil Kumar. It is not disputed that salary of deceased Ranbir Singh was Rs.7444/- as is also evident from the Salary Certificate issued by the Commandant 136 Battalion, BSF. In my view the learned Tribunal was in patent error in deducting Rs.1298/- from his gross salary in view of the fact that the deceased was in disciplinary force and getting his meals and dress etc. for free. Reliance in this regard may also be placed upon para 17 of the judgment of Hon'ble Supreme Court in **National Insurance Company Limited v Indira Srivastav and others, 2008(1) RCR (Civil) 359).** Para 17 of the said judgment reads as under:-

> "**17**. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted".

Therefore, the basic salary of the deceased has to be taken as Rs.7444/- Further, in view of judgment of Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680,** 50% increment has to be granted on account of future prospects as the deceased was below 40 years of age. Deduction of 1/3rd was correctly effected by the Tribunal as the claimants are two in number. However, instead of 16, Multiplier of 15 needs to be applied; as also compensation under other conventional heads has to be included. Accordingly, a sum of Rs.77000/- is awarded towards loss of consortium, funeral expenses and loss of estate. Further, keeping in view the judgment of Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130**, as well as decision dated 14.3.2019 in **FAO 2110/2016 titled as Sri Ram General Insurance Company Limited v Smt. Beant Kaur and others,** a sum of Rs.40,000/- is granted towards loss of filial consortium to the claimant mother. Accordingly, the reworked compensation is as under:-

Head	Amount (in Rupees)
Dependency	7444 minus 1/3rd (2481) = 4963 +50% towards future increase being in Govt. Service and below 40 years of age as per decision of Hon'ble Apex Court in Pranay Sethi's case= 4963+2481 =7444/- and thus total dependency 7444x12x15= 13,39,920/-
10% increase after every three years in view of judgment in Pranay Sethi's case (supra) towards loss of consortium, funeral expenses and loss of estate	77,000/-
Loss of filial consortium to mother in view of judgment in Magma (supra)	40,000/-
Grand total of re-worked compensation	13,39,920 + 77000+ 40000 = 14,56,020/-
Less compensation awarded by the Tribunal	7,87,200/-
Remaining and payable enhanced compensation	6,69,720/-

Needless to say the amount already awarded by the Tribunal shall be deducted from the compensation re-worked above. Appellant shall also be entitled to interest @ 9% from the date of filing of the claim petition till actual realization.

Disposed of accordingly.

Pending application(s), if any, also stand disposed of.

(Nidhi Gupta)
Judge

November 17,2022.
Joshi

Whether speaking/reasoned **Yes**

Whether reportable **Yes/No**

RAJINDER PARSHAD JOSHI
2022.11.17 10:05
I attest to the accuracy and integrity of this document