IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.3962 of 2005
Date of Decision: 29.04.2022

Jeeto Devi and another

....Appellants

VERSUS

Sohna alias Suba and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Shitanshu Goel, Advocate for
Mr. J.K. Goel, Advocate for the appellants.

Respondent Nos.1 and 2 *ex-parte*.

None for respondent No.3.

Mr. Neeraj Khanna, Advocate for
Mr. R.N. Singal, Advocate for respondent No.4.

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VIKAS SURI, J.

This is claimants' appeal against the award dated 23.05.2005 passed by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal'), seeking enhancement of compensation.

The facts, in brief, that need to be noticed for the adjudication of this appeal, are as hereinafter recorded.

On 03.10.2003, a young life of 20 years was extinguished in the unfortunate accident. The claimants are the aged parents of deceased Chani Ram, who succumbed to his injuries suffered in the said accident. FIR No.601 dated 03.10.2003 under Sections 279, 304-A IPC, Police Station City Karnal was registered in that regard.

The appellants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 on 23.10.2003. The driver and owner of the offending truck (HR-45-1385) chose not to file any written statement to the claim petition and were subsequently proceeded against *ex-parte* vide order dated 11.11.2004. Even before this Court, the said respondents were summoned through *munadi* and affixation and despite the same, they chose not to put in appearance and as such, were proceeded against *ex-parte* vide order dated 23.07.2019.

In the said facts and circumstances, the factum of involvement in the motor vehicle accident, suffering of fatal injuries by deceased Chani Ram as well as rash and negligent driving of respondent No.1 i.e. driver of the offending truck, stood proved before the Tribunal. There is no challenge to the said findings.

On the basis of aforesaid findings, the Tribunal assumed the income of the deceased at Rs.2,000/- per month, being the then minimum wages payable to an unskilled worker. Dependency of the family was taken to be 1/3rd. As the age of the deceased was proved to be 20 years, multiplier of 15 was applied and on the said basis, total dependency of Rs.1,20,000/- was calculated. In addition to the said amount, Rs.2,000/- was also awarded as funeral expenses. Thus, the total compensation of Rs.1,22,000/- along with interest @9% p.a. from the date of filing of the petition till realization of the whole amount, was awarded and Rs.1,100/- was assessed as counsel fee. The said award was passed in favour of the appellant-claimants and against all the respondents being jointly and severally liable to pay the said amount of compensation.

Mr. Shitanshu Goel, learned counsel for the appellants has emphatically argued that the amount awarded by the Tribunal is much on the lower side and in view of the ratio of the judgments of the Apex Court delivered in the last decade on the subject, the compensation awarded deserves to be substantially enhanced. Reliance has been placed on ***National Insurance Co. Ltd. v. Pranay Sethi,*** **(2017) 16 SCC 680;** ***Sarla Verma v. DTC,*** **(2009) 6 SCC 121;** ***New India Assurance Co. Ltd. v. Somwati,*** **(2020) 9 SCC 644** and ***Magma General Insurance Co. Ltd. v. Nanu Ram,*** **(2018) 18 SCC 130.**

Learned counsel for the respondent-insurance company is not in a position to dispute the principles laid down by the Apex Court in the above referred judicial precedents and the factum that they still hold the field.

Learned counsel for the appellants made an attempt, by referring the statement of appellant No.2 who had appeared as PW1, to contend that the deceased Chani Ram was running a Dairy and earning Rs.6,000/- per month. Except for the aforesaid statement, no other material or substantial evidence has been brought on record or to the notice of this Court to take a different view than the one taken by the Tribunal. Thus, the presumed income of the deceased is maintained at Rs.2,000/- per month for the same reasons recorded by the Tribunal.

The next argument urged on behalf of the appellants is with regard to the dependency factor. It is argued that in the case of a young adult, who was still a bachelor, dependency should have been 50% of the income of the deceased and not 1/3rd as held by the Tribunal. In that regard, reference has been made to ***Sarla Verma's case (supra)***. The relevant paragraphs of the judgment in that regard reads as under:-

> **"31.** Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as

> personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.
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> **32.** Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

The next argument urged is with regard to the multiplier applied by the Tribunal being on the lower side. On the strength of the ratio of law laid down in ***Sarla Verma's case (supra),*** as approved in ***Pranay Sethi's case (supra)***, it is strongly contended that the multiplicand should have been 18 as the age of the deceased was 20 years and there is no dispute with regard to the age.

Learned counsel for the appellants has further argued that the Tribunal has awarded only Rs.2,000/- towards funeral expenses and nothing towards loss of estate. Strong reliance has been placed upon ***Pranay Sethi's case (supra)***, while referring to paragraph No.59 of the said judgment, to contend that the amounts mentioned in the said paragraph against conventional heads, viz. loss of estate, loss of consortium and funeral expenses, deserve to be awarded to claimant-appellants. It is further submitted that the said judgment was rendered on 31.10.2017 and it also provides for enhancement @ 10% every 3 years thereafter. Thus, it is claimed that the amounts against the conventional heads are liable to be awarded by increasing the same by 10% in terms of ratio of ***Pranay Sethi's case (supra)***. While additionally referring to ***Nanu Ram's case (Supra),*** it has been contended that consortium is to be awarded to each of the parent separately and the said principle has been noticed and followed in ***Somwati's case (supra)***.

It has also been contended that the Tribunal has erred in not granting any compensation on account of future prospects. While referring to ***Pranay Sethi's case (supra)***, 40% addition on the dependency amount has been pressed for.

Per contra, learned counsel for the respondent-insurance company has opposed the said plea and made an endeavour to distinguish the said judgment in futility. It is submitted that the income has been presumed and not proved on the basis of any evidence led and as such, addition on account of future prospects is not warranted.

In the considered opinion of this Court, the plea of insurance company deserves to be noticed and rejected. The argument raised has no foundation in light of the binding precedent of ***Pranay Sethi's case (supra)***. Moreover, it deserves to be noticed here that the unrebutted statement of appellant No.2, while appearing as PW1, it has been stated in support of the claim that the deceased was earning Rs.6,000/- per month but in its wisdom and in the absence of any other corroborating evidence, the Tribunal has correctly assumed the earnings of the deceased on the basis of minimum wages prevalent at the relevant time. Applying the principles as discussed in ***Pranay Sethi's case (supra)***, while laying the ratio for enhancement on account of future prospects even for a Non-Government employee, no distinction has been made and as such would be applicable in the case of assumed income on minimum wages as well. It is not expected for an average person to stagnate at the same position for his whole life. Thus, the amount of dependency deserves to be further enhanced by 40%, as the ratio of the above-discussed cases would be applicable in the present case as well.

In view of the above, the present appeal deserves to be allowed in part. It may be noticed here that out of the enhancement of compensation as per the table given hereunder, appellant No.2 is only entitled to filial consortium. Though, the Tribunal has awarded equal compensation to both the appellants, being aged parents, however, in view of the law laid down in ***Sarla Verma's case (supra)***, as noticed earlier, enhancement on aspects other than filial consortium to the father is being awarded to the mother i.e. appellant No.1. The finding of the Tribunal awarding equal compensation to both the appellants has not been challenged by any party and it has been stated at bar that the compensation so awarded by the Tribunal, has also been disbursed to the claimants and in such circumstances, the said finding is not being interfered with. The following table summarizes the compensation awarded by the Tribunal against the compensation enhanced by this Court.

Income : 2000.00 (Minimum wages in 2003)

Age : 20 years

	Heads	Tribunal	High Court
	Multiplicand	15	18
1.	Dependency on deceased:	1/3rd	50 %
	- [(2000/3) x 12] x 15	1,20,000	
	- [(2000/2) x 12] x 18		2,16,000
2.	Future prospects (+ 40%)		86,400
3.	Loss of estate		16,500
4.	Funeral expenses	2000	16,500
5.	Filial consortium to Mother		44,000
6.	Filial consortium to Father		44,000
	Total Compensation :	1,22,000	4,23,400

In view of the above, the present appeal is partly allowed and the compensation awarded is enhanced by (Rs.2,57,400/- + Rs.44,000/-) Rs.3,01,400/- with interest @ 7.5% per annum on the said amount from the date of filing of the petition till realization of the whole enhanced amount.

Out of the aforesaid enhancement, Appellant No. 1 (mother) would be paid Rs.2,57,400/- and the remaining Rs.44,000/- to Appellant No.2 (father), along with the aforesaid interest.

It is, however, clarified that in case either of the appellant-claimant pre-deceases the other, the enhanced amount and interest thereon would exclusively fall to the share of the surviving parent (appellant herein) under the award, as they have unfortunately lost their support and hope in old age. At an advanced age in life, even a minuscule financial security may provide some succour to the surviving parent.

The award passed by the Tribunal stands modified to the above extent.

All pending applications, if any, are also disposed of accordingly.

(VIKAS SURI)
JUDGE

April 29, 2022
Sachin M.

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No