IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 4471/2019 (O&M)

Date of decision: November 15, 2022.

Manisha and others

……….Appellants

Vs.

Sandeep Rathee and others

……….Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Lalit Kumar, Advocate for the appellants.

Mr. Nigam K.Bhardwaj, Advocate for the respondent-Insurance Company.

Nidhi Gupta,J.

This appeal has been filed by the claimants/appellants seeking enhancement of the compensation awarded by the Motor Accident Claims, Tribunal, Rohtak (for short the Tribunal) vide Award dated 12.11.2018 on account of death of Baljit. Claimants are widowed wife, minor daughter, and parents of the deceased. Learned Tribunal after considering the evidence and pleadings on record held that Baljit died due to injuries suffered by him in a motor vehicular accident that took place on 2.3.2018 due to rash and negligent driving of offending car bearing registration No. HR-16-J-9090 being driven by Sandeep Rathee -respondent no.1.

Ld. Tribunal after accepting the income of the deceased to be Rs.10,600/- per month and relying upon the judgment of Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, held that the claimants/appellants were entitled to addition of 40% increment towards future prospects as the deceased was below 40 years of age. Claimants being four in number, as per law laid down by Hon'ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104,** 1/4th income of the deceased was taken towards his personal and living expenses and dependency of the claimants was thus assessed to be Rs.11130/-. Applying the ratio of judgment of **Sarla Verma** (supra) multiplier of 15 was applied since deceased at the time of his death was 37 years of age. Accordingly, the calculation of compensation came to a total of Rs.20,73,400/- (i.e. Rs.11,130 x 12 x 15). Besides the above, the learned Tribunal also awarded Rs.15,000/- on account of loss of estate, Rs.40,000/- on account of loss of consortium and Rs.15,000/- on account of funeral expenses in view of judgment of Hon'ble Supreme Court in view of judgment in **Pranay Sethi's** case (supra).

The driver, owner and insurer of the vehicle were held jointly and severally liable to pay the compensation. The claimants were held entitled to interest @ 9% per annum from the date of filing of the claim petition till final realization. It was further directed that the amount of compensation be disbursed amongst the claimants as under:-

> "27. Out of the awarded amount, a sum of Rs.9,73,400/- shall be paid to claimant no.1 who is widow, a sum of Rs.6,00,000/- shall be paid to claimant no.2, who is minor daughter and the remaining amount of Rs.5,00,000/- shall be equally shared by claimants no. 3 and 4 who are parents of the deceased. It is further ordered that out of share of claimants no.1,3 and 4, 25% shall be paid in cash and remaining 75% shall be deposited in some fixed deposit scheme fetching maximum rate of interest in a nationalized bank for a period of three years whereas the share of claimant no.2 shall be deposited in some fixed deposit scheme fetching maximum rate of interest in nationalized bank and she shall be entitled to withdraw the same on attaining majority. However, the claimants shall be entitled to receive periodical interest thereon. It is further directed that the respondents would directly deposit the amount with interest upto date in the bank accounts of the claimants who would also supply the certified copy of this award to the concerned Bank Manager, for compliance. Counsel fee is assessed at Rs.2200/- Memo of costs be prepared and file be consigned to the record room after due compliance."

Present appeal has been filed seeking enhancement of the compensation as above awarded.

Learned counsel for the appellants has argued that as per the judgment of the Hon'ble Apex Court in Pranay Sethi's case (supra) the claimants were entitled to 50% increment towards future prospects, however, the Tribunal has given only 40%. Learned counsel further states that loss of consortium of only Rs. 40,000/- has been given, whereas as per law laid down by Hon'ble Apex Court, all the claimants are entitled to loss of consortium of Rs.40,000/- each.

Learned counsel for the Insurance Company refutes the submissions made by learned counsel for the claimants and prays for dismissal of the appeal.

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

There is no dispute regarding the death of Baljit in a motor vehicular accident, as already noticed above, and as recorded by the ld. Tribunal. However, the compensation computed by the Tribunal has to be re-worked somewhat, being erroneous and contrary to the calculations laid down by the Hon'ble Supreme Court.

A perusal of the impugned award shows that learned Tribunal has assessed the income of the deceased to be Rs.10,600/-. In my view, this is contrary to the record. The widow of deceased Mrs. Manisha appeared as PW1 and tendered in evidence her affidavit Ex. PW1/A and deposed that her husband, at the time of his death was working in Ganesh Roadlines, Hissar and was drawing salary of Rs.13.000/- per month. She further deposed that deceased had also appeared in the test for the post of Driver in Haryana Roadways. In support, the claimants had examined Kuldeep Bhardwaj, HR Executive from Ganesh Roadlines, Hisar as PW2, who proved salary certificate of the deceased as Ex. P10 and salary register as Ex. P11. A perusal of the same reveals that at the time of his death, the deceased was in service and was getting Rs.13,880/- per month as salary. Though, the Tribunal has noticed this fact, however, the ld.

Tribunal has still held that the salary of the deceased can be taken as basic pay only which, in this case comes to Rs.10,600/-. In my view this is incorrect as there is sufficient evidence on record that the salary of the deceased was Rs. 13,880/–; and the same is also not permissible being in contravention of the judgment of Hon'ble Supreme Court in **Manasvi Jain vs. Delhi Transport Corporation, SCC Law Finder Doc Id #546664,** where their Lordships in para 3 of said judgment have held that:

> "Considering the decision of this Court in Shyamwati Sharma & Ors., (supra), in our opinion, except contribution towards Income Tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary".

Accordingly, the Tribunal was in patent error in not taking the salary of the deceased as Rs.13,880/- per month.

Furthermore, keeping in view, the judgment of Hon'ble Apex Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680,** 50% increment ought to have been given to deceased as he was admittedly 37 years old at the time of his death. Therefore, the Tribunal has erred in awarding only 40% on account of future prospects. Deduction of 1/4th was correctly made by the Tribunal keeping in view the number of claimants. Multiplier of 15 was also correctly applied. As regards the loss of consortium, the Tribunal has awarded only 40,000/- on account of loss of consortium to the claimant-widow. As per prevalent law claimant no.1 is entitled to Rs.44,000/- as spousal consortium; claimant no.2 being minor daughter of the deceased is entitled to Rs.44,000/- as parental consortium, and appellants no. 3 and 4 being parents of the deceased are also entitled to Rs.44,000/- each as filial consortium. Funeral expenses and loss of estate @ 15,000/- under each head is also maintained. Even interest @ 9% is legal and just.

Accordingly, appellants/claimants are held entitled to compensation which is reworked as under:-

Amount awarded by Tribunal	Fresh Calculation (In rupees)
Income Rs.10,600/-	13,880/-
Future prospects 40%	Future prospects: 50% 13880/- + Rs.6940/- = Rs.20,820/-
Dependency 1/4th	Dependency 1/4th of 20820/- 5205/- + Rs. 15615/-
Age/Multiplier: 37/15	Age/Multiplier: 37/156 = Rs. 15615x12x15 = Rs.28,10,700/-
Loss of consortium Rs.40,000/-	Loss of consortium Rs.44,000/- x 4 (four claimants) Rs.1,76,000/- (As per judgment in Pranay Sethi (supra) 10% of consortium enhanced after 3 years 28,10,700/- + 1,76,000/- = Rs.29,86,700/-
Loss of Estate Rs.15,000/-	Loss of Estate Rs.15,000/-
Funeral Expenses- Rs.15,000/-	Rs.15,000/-
Interest @ 9% per anum from the date of filing of claim petition total of which comes to Rs. 20,73,400/-	Amount comes to Rs.29,86,700/+ Rs.30,000/- (Loss of Estate and Funeral Expenses) = Rs.30,16,700/-

Needless to say that amount already awarded by the Tribunal is deductible from the fresh calculations made above. Claimants shall be entitled to interest @ 9% at the enhanced compensation from the date of filing of the claim petition till final realization. Ratio and manner of disbursal of compensation amongst the claimants shall also remain unchanged.

Disposed of accordingly.

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

(Nidhi Gupta)
Judge

November 15,2022.
Joshi

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