IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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1. FAO No. 1176 of 2005 (O & M)
Date of decision : 28.10.2022

Geeta Devi **……Appellant**

Vs.

Partap and others **……Respondents**

2. FAO No. 1175 of 2005 (O & M)

Ajay Pal **……Appellant**

Vs.

Partap and others **……Respondents**

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. M.S. Yadav, Advocate, for the appellant(s)

Mr. D.K. Dogra, Advocate, for respondent no. 3/Insurance co.

TRIBHUVAN DAHIYA, J. (Oral)

1. These two appeals arise out of a common award passed by the Motor Accident Claims Tribunal, Gurgaon, now Gurugram, (in short 'the Tribunal') dated 6.11.2004, pertaining to appellant Geeta Devi, on account of death of her husband Daya Ram, and appellant Ajay Pal on account of injuries suffered by him in the accident dated 1.1.2002.

2. Although the appeal, FAO No. 1176 of 2005, has been filed by Geeta only, originally there were two claimants before the Tribunal, namely Geeta and Basanti Devi, therefore, the compensation assessed shall be payable to both the original claimants.

3. The Tribunal, while assessing the compensation payable to Geeta

Devi widow of Daya Ram, has held that Daya Ram was serving as Peon in the office of Advocate General, Haryana at Chandigarh, as established by Ex.P-7/3 dated 16.8.2000, which is appointment letter issued to the deceased under *ex-gratia* scheme. The Tribunal, however, held since the said exhibit was only a photocopy, which cannot be taken to have been proved on record. Therefore, the deceased's income was assessed as Rs.2100/-per month, which was minimum wage of a labourer. Out of this income, 1/3rd deduction was made, and loss of dependency was assessed to be Rs.1400/-per month. The deceased's age was held to be 20 years, and multiplier of '16' was applied for assessing the compensation. An amount of Rs.2,68,800/- was awarded for loss of income, and Rs.5200/- for loss of consortium and funeral expenses. In this way, total amount awarded was Rs.2,74,000/- with interest ~~@~~ at the rate of 9% per annum.

4. The findings of the Tribunal with regard to assessment of income of deceased Daya Ram, cannot be sustained, since as per Ex.P7/1, i.e., last pay certificate of the deceased, his net pay was Rs.3782/-per month in the pay scale of Rs.2550-3200. This is duly established on record. Photocopy of the deceased's I-card as Peon in the office of Advocate General, Haryana, has also been placed on record as Ex.P-73. Further, copy of the appointment letter, Ex.P-7/3, states that the deceased's was appointed on the post of peon as a regular appointee, to be confirmed after completing two years period of probation. His service was governed by the Advocate General, Haryana (Group-D) Service Rules, 1996). There is no evidence to the contrary on record. Therefore, there was no reason with the Tribunal to assess the deceased's income on the basis of minimum wages of a labourer, by ignorning the duly exhibited appointment letter, salary slip and I-card. It needs to be emphasized

that the Tribunal is not a Civil Court and strict rules of evidence do not apply to it. As per settled law, it is required to decide the issues on preponderance of probabilities. Therefore, there is no escape from concluding that deceased's income has been wrongly assessed by the Tribunal by taking a hyper technical view, which is wrong. Accordingly, its finding about the assessment of income is set aside, and the deceased's monthly income is held to be Rs. 3782/-per month having been employed as a regular Peon in the office of Advocate General, Haryana at Chandigarh.

5. As per law laid down by the Supreme Court in ***Sarla Verma v. Delhi Transport Corporation;*** **2009 (3) RCR (Civil) 77,** for assessing compensation on account of death for a person aged 20 years, multiplier of '18' was required to be applied. Whereas, the Tribunal wrongly applied the multiplier of '16' for assessing compensation. The finding to that effect is, accordingly, set aside being contrary to law and the appellant/claimant is held entitled to assessment of deceased's income by applying multiplier of '18'. Besides, the claimants were not awarded any compensation on account of future increase in the deceased's income as per law laid down by the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others;*** **2017 (4) RCR (Civil) 1009.** Since the deceased was in permanent employment in the office of Advocate General, Haryana at Chandigarh, the claimants are held entitled to an addition of 50% to the deceased's income towards future prospects. Further, the claimants are also entitled to award of compensation on account of conventional heads in view the law laid down in ***Pranay Sethi*** **case (supra).** Accordingly, they are to get to Rs.44,000/- each for loss of consortium, Rs.16,500/- towards funeral expenses and Rs.16,500/- towards loss of estate. The amount of compensation under the conventional heads has been quantified

with 10% increase, as per the law laid down.

6. In view of the aforesaid, the appellant-claimant Geeta Devi is held entitled to the following amount of compensation:

Sr. No.	Head	Compensation awarded by this Court
1	Annual income (3782 x 12)	45,384
2	Future prospects @ 50% of annual income	22,692
3	Total income including future prospects	68,076
4	Income after deduction @ 1/3rd towards personal expenses	45,384 (68076 - 22692)
5	Multiplier (18), 45384 x 18	8,16,912
6	Loss of consortium (with 10% increase)	88,000 (44,000 x 2)
7	Funeral expenses (with 10% increase)	16,500
8	Loss of estate (with 10% increase)	16,500
9	Total amount of compensation	9,37,912

7. The award passed by the Tribunal dated 6.11.2004, therefore, stands modified with respect to compensation awarded to the claimants as afore stated. They are held entitled to compensation of an amount of Rs.9,37,912/-, with interest at the rate of 9% p.a. from the date of filing the claim petition till its actual realization. The amount of compensation already received shall be deducted out of this amount. The liability to satisfy the award, share of the claimants, and the procedure of disbursal shall be as determined by the Tribunal.

8. The appeal bearing FAO No. 1176 of 2005 stands disposed of accordingly.

9. So far as awarding of compensation to the appellant-claimant Ajay Pal on account of injuries suffered by him in the accident in question is concerned, the Tribunal has held that Medical Board assessed his disability to be 15% on account of 'traumatic fracture with k nailing right femur with fracture union of left tibia upper end with mild restriction of right knee and left knee'. On account of the injuries suffered, the claimant Ajay Pal was awarded compensation of Rs.20,000/-towards pain and suffering, Rs.30,000/-towards disability, and Rs.58,000/-towards medical expenses on the basis of medical

bills produced on record. Besides, an amount of Rs.5,000/-was awarded towards travelling expenses. In this manner, the total compensation awarded to Ajay Pal was Rs.1,13,000/- along with interest at the rate of 9% per annum.

10. Learned counsel for the appellant has argued that on account of disability suffered by the claimant, there was loss of income to him. It has also been contended that based on the disability suffered by the injured, appropriate multiplier should be applied for assessing the compensation to be awarded.

11. The argument of learned counsel for the appellant has no merit since it could not be disputed by him that there is no evidence on record to establish that the disability suffered by the claimant on account of traumatic fracture was of permanent nature. Besides, there is no evidence regarding the nature of job the injured was doing at the relevant time. In view of these facts, there is no ground to enhance the compensation awarded to the injured claimant by applying the multiplier method.

12. The findings of the Tribunal awarding compensation to the injured Ajay Pal, therefore, call for no interference. The claimant Ajay Pal's appeal bearing FAO No. 1175 of 2005, accordingly, stands dismissed.

13. Pending applications, if any, are disposed of as having been rendered infructuous.

14. A photocopy of this order be placed on the file of the connected case.

(TRIBHUVAN DAHIYA)
JUDGE

28.10.2022
Ashwani

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