IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

370 FAO-3928-2010
Date of Decision : 12.09.2022

Bhanwati

---Appellant

versus

General Manager Haryana Roadways, Jind and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. R.K.Chaudhary, Advocate for
Mr. Jagbir Malik, Advocate
for the appellant.

Mr. Hitesh Pandit, Addl.A.G., Haryana.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3- Insurance Company.

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JAGMOHAN BANSAL, J. (ORAL)

1. The appellant through instant appeal is seeking enhancement of compensation awarded vide award dated 30.11.2009 passed by Motor Accident Claims Tribunal, Hisar (for short 'Tribunal') whereby learned Tribunal has awarded a sum of Rs.3,82,000/- along with interest @ 6% per annum from the date of filing of the claim petition.

2. Learned counsel for appellant submitted that on account of death of 17 years old son of the appellant on 19.01.2006, in a road

accident, a claim petition was filed under Section 163-A of Motor Vehicles Act, 1988 (for short '1988 Act'). Learned Tribunal in terms of Section 163-A of 1988 Act though has applied Second Schedule to 1988 Act, however, incorrect income has been assessed and deduction on account of personal expenses to the extent of half has been calculated whereas it should be 1/3rd of assessed income. He further contended that as per judgement of this Court in **Oriental Insurance Company Ltd. Vs. Gurdev Singh and others, 2013(2) RCR (Civil) 611,** the claimant is entitled to compensation under conventional heads inspite of filing of claim petition under Section 163-A of the 1988 Act. No distinction can be made between claimants filing petition under Section 163-A of the 1988 Act or under Section 166 of 1988 Act qua compensation under conventional heads.

3. Learned counsel for the respondent-Insurer conceded that income of deceased should be calculated Rs.3300/- per month instead of Rs.2500/- per month and deduction on account of personal expenses should be 1/3rd instead of half. On the question of compensation under conventional heads i.e. 'loss of consortium', 'loss of estate' and 'funeral expenses', he contended that appellant cannot be awarded compensation beyond the Second Schedule because claim was filed under Section 163-A of the Act. The compensation under conventional heads was granted by a five-Judge Bench of **Hon'ble Supreme Court in National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680** and a

three-Judge Bench of Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121** where petition was filed under Section 166 of the 1988 Act whereas appellant is covered under Section 163-A of the Act, thus, cannot claim benefit partially under Section 163-A of the 1988 Act and partially under Section 166 of the Act.

4. I have perused the record and heard arguments of both sides.

5. There is no dispute between the parties qua multiplier, medial expenses, annual income and deduction on account of personal expenses of the deceased. The appellant has placed reliance upon judgment of this Court in **Gurdev Singh's case (supra)** wherein a Co-ordinate Bench of this Court while relying upon judgment of Hon'ble Supreme Court in **Sarla Verma's case (supra)** has categorically held that a person who has filed petition under Section 163-A would be entitled to compensation under conventional heads like a person who has filed under Section 166 of 1988 Act. For the ready reference, paras No. 11 and 14 of the judgement of this Court in **Gurdev Singh's case (supra)** are reproduced as below:-

> "*11.Further, in the landmark judgment of* ***Sarla Verma*** *(supra), apart from the issues of multiplier, personal deduction and income assessment in case of a deceased (for cases falling under section 166 of the Motor Vehicle Act), the Hon'ble Apex Court was pleased to lay down certain parameters for awarding compensation under conventional heads like funeral*

expenses, loss of consortium/ estate, transportation and medical expenses (incurred if any before death occurred). If we were to compare the quantum of compensation for loss of consortium as given in 2nd schedule with the quantum as laid down in ***Sarla Verma,*** *we would find that there is an appreciable difference between the two i.e. Rs. 5000/ Rs.2000/- under the 2nd schedule and Rs. 20000/ Rs. 10,000/- in* ***Sarla Verma's*** *case. The question that instantly crops up is as to how fair is it to award loss of consortium on a lower scale in cases falling under section 163-A. One can understand a fixed income assessment on a structured basis as a quid pro quo for doing away with the need to prove negligence on the part of the claimants but it is hard to fathom the logic of a differential quantum qua the conventional heads like loss of consortium, only on the basis that proceedings have been preferred under section 163-A and Section 166. Can it be argued or held that loss of consortium will be less for a family member if he files a claim u/s 163-A, but will automatically become higher in case the claim is filed under section 166 or the case filed u/s 163-A itself is converted into one under section 166?. This would be absolute mockery of justice dispensing process. The same goes true for funeral expenses and for medical expenses also.*

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14 There can be no doubt about the fact that the decision of Hon'ble the Supreme Court in ***Sarla Verma's*** *case and* ***Raj Kumar's*** *case is covered in the broad sweep of Article 141 of the Constitution of India. It would therefore be appropriate to hold that the decisions of the Hon'ble Supreme Court in* ***Sarla Verma's and Raj Kumar's*** *cases can be suitably applied even in cases falling under section 163-A, and*

> *2nd schedule of the Motor Vehicle Act is not a watertight compartment. Consequently, it would be appropriate to hold that in so far as the limits of conventional heads in the 2nd Schedule has no co-relation with the benefit granted u/s 163-A i.e. of the need to do away with proving negligence, a deviation may be made in assessing/ awarding compensation under the heads medical expenses, funeral expenses, loss of consortium/ loss of estate. In this regard courts can resort to the ratio of the decisions of the Hon'ble Supreme Court in* ***Sarla Verma*** *(supra) and* ***Raj Kumar*** *(supra) which, as already stated above, is the law of the land."*

6. Learned counsel for Insurance Company has not pointed out any judgement of this Court or Hon'ble Supreme Court forming an opinion contrary to opinion of this Court in **Gurdev Singh's case (supra).** This Court in view of judgment of Hon'ble Supreme Court in **UOI vs. Raghubir Singh (1989) 2 SCC 754** is bound by judgement of a Co-ordinate Bench of this Court and even otherwise there is no reason to form an opinion contrary to opinion expressed by a Co-ordinate Bench of this Court, thus respectfully following judgment of a Co-ordinate Bench of this Court, it is hereby held that appellant is entitled to compensation under conventional heads apart from compensation under Section 163-A of 1988 Act. Accordingly, amount of compensation is re-determined as below :-

Heads	Amount of compensation (in Rs.)
Annual income of the deceased	39600
Deduction on account of personal expenses	1/3rd

Assessed income	26400
Multiplier (18)	475200
Loss of estate	16500
Loss of consortium	44000
Funeral expenses	16500
Medical expenses	1,12,000
Total	6,64,200

7. The appellant is entitled to interest @ 7.5% from the date of filing claim petition till the date of actual payment. It is made clear that amount already paid would be deducted from claim determined hereinabove.

8. The respondents are directed to make payment within a period of eight weeks from today.

6. The appeal is disposed of in the above-stated terms.

(JAGMOHAN BANSAL)
JUDGE

12.09.2022
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No