423 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6555-2012
Date of Decision: 20.09.2022

MANISHA .... Appellant

Versus

MEHBOOB ALI AND ORS ..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Anuj Balian, Advocate
for the appellant.

Mr. Pardeep Goyal, Advocate
for respondent No.3.

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JAGMOHAN BANSAL, J. (Oral)

1. The appellants through instant appeal is seeking enhancement of compensation awarded vide award dated 22.10.2012 passed by learned Motor Accident Claims Tribunal (for short 'Tribunal'), Panchkula, whereby learned Tribunal has awarded compensation of Rs.6,95,664/- alongwith interest @ 6% per annum on account of death of Shiv Nandan Singh.

2. The facts emerging from record are that Shiv Nandan Singh, 34 years old man, working as Security Guard with Associates Group Security and Services Private Limited, Chandigarh, met with an accident on 27.10.2010 and passed away on the same day. Shiv Nandan Singh is survived by wife, two children and widow mother. The dependents of the deceased filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Shiv Nandan Singh. Learned Tribunal awarded a sum of Rs.6,95,664/- as compensation on

account of death of Shiv Nandan Singh.

3. Learned counsel for the appellant contended that as per Ex.P-2, which is not disputed by the insurer, the deceased was appointed as Security Guard on a monthly salary of Rs.6390/- per month whereas learned Tribunal on the basis of oral testimony of clerk of Associates Group Security and Services Private Limited, Chandigarh, has assessed income of the deceased Rs.4,000/- per month. He contended that Ex.P-2, which is depicting salary of deceased Rs.6390/- per month was brought by the same clerk, who orally stated that deceased was appointed on a monthly salary of Rs.4,000/- per month. He prayed that future prospects may be assessed @ 50% of income of the deceased. He further contended that amount of compensation deserves to be reassessed in view of the judgment of Hon'ble Supreme Court in **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680** and **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121.**

3. Per contra, learned counsel for the insurer though conceded that amount of compensation needs to be reassessed in view of judgment of Hon'ble Supreme Court in **Pranay Sethi's case (supra) and Smt. Sarla Verma's case (supra)** yet he pleaded that income of deceased cannot be considered Rs.6390/- as clerk of the company where deceased was working has orally stated that salary of deceased was Rs.4,000/- per month. On the question of future prospects, he contended that future prospects cannot be assessed 50% of the salary of deceased because he had joined 20 days back and was working with a private company, thus, there is no question of future prospects to be assessed at 50%.

4. I have perused the record and heard arguments of counsel for the parties.

5. The dispute lies in the narrow compass i.e. monthly income of the deceased and future prospects. Both the counsels concede that as per salary slip exhibited as Ex.P-2, the salary of the deceased was Rs.6390/- per month. The oral testimony of any witness in comparison of documentary evidence cannot be preferred. The clerk, who had deposed that salary of the deceased was Rs.4,000/- per month has brought salary slip depicting salary of deceased Rs.6390/- per month. Learned counsel for the insurer expressed his inability to controvert the fact that as per salary slip, the deceased was getting salary Rs.6390/-. It is settled proposition of law that documentary evidence cannot be ignored just on the ground of oral evidence. Leaving aside evidences i.e. documentary or oral, I am of the opinion that the income of the deceased during 2010-11 cannot be believed to be Rs.4,000/- per month, because he was having four family members and residing in Chandigarh. It seems to be highly improbable that a person having four family members was earning Rs.4,000/- per month especially when he was staying in Chandigarh. Thus, I am of the view that the income of the deceased must be assessed Rs.6390/- per month. I find substance in the arguments of learned counsel for the insurer that future prospects should not be considered 50%. Both the counsel on being asked by the Court agreed that future prospects may be assessed 40%. It is made clear that deduction on account of personal expenses as per afore-cited judgments should be $1/4^{th}$ whereas learned Tribunal has considered $1/3^{rd}$.

6. Considering, the judgments of Hon'ble Supreme Court in

Pranay Sethi's case (supra) and Smt. Sarla Verma's case (supra), the amount of compensation is redetermined as below:-

Particulars	Amount of compensation
Annual income of the deceased	76,680/-
Future prospects	40.00%
Income after addition of future prospects	1,07,352/-
Deduction on account of personal expenses	$1/4^{th}$
Assessed income	80,514/-
Multiplier (17)	13,68,738/-
Loss of estate	16500/-
Loss of consortium (44000x4)	1,76,000/-
Funeral expenses	16,500/-
Total	15,77,738/-

7. The appellant shall be entitled to interest @ 7.5% from the date of filing of 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.

9. The appeal is disposed of in the abovesaid terms.

(JAGMOHAN BANSAL)
JUDGE

20.09.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*