IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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FAO-2512-2015
Date of decision: 16.05.2022

Panawati and others .....Appellants

Versus

Pawan Kumar and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ashish Singh, Advocate for
Mr. Ashwani Arora, Advocate
for the appellants.

Mr. Vishal Aggarwal, Advocate
for respondent No.3-insurance company.

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MANJARI NEHRU KAUL, J. (ORAL)

The instant appeal has been preferred by the appellants/claimants (i.e. widow and six children of deceased Desh Raj Bharara) against the award dated 17.09.2014, passed by the learned Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, whereby, the following compensation was awarded to them:-

Sr. No.	Head	Amount
1.	Annual income	Rs.15,000/-
2.	Deduction towards personal expenses (1/3rd)	Rs.5,000/-
3.	Dependency	Rs.10,000/-
4.	Multiplier	5
5.	Dependency after applying multiplier	Rs.50,000/-
6.	Funeral and last rites expenses	Rs.30,000/-
7.	Medical expenses	Rs.20,000/-
8.	Loss of love and affection	Rs.20,000/-
	Total compensation	Rs.1,20,000/-

The respondents were held jointly and severally liable to pay the amount of compensation along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of actual payment only to appellant/claimant No.1 being widow of the deceased, however, appellants/claimants No.2 to 7 being major sons of the deceased were declined any compensation.

As per the pleaded case of the claimants on 01.10.2012, when deceased Desh Raj Bharara (hereinafter called as 'deceased') was going on foot along with his son, the offending vehicle i.e. Bolero Pick Up bearing registration No.HR-37-C-2933 being rashly and negligently driven by its driver i.e. respondent No.1 hit the deceased from behind. Resultantly, the deceased aged about 98 years fell down on the road and the offending vehicle ran over his legs. The driver of the offending vehicle fled away from the spot after leaving his vehicle there. Though the deceased was removed to the hospital, however, he succumbed to his injuries on 03.10.2012. FIR No.68 dated 09.08.2008 under Section 279 and 337 IPC was registered at Police Station Shahzadpur against respondent No.1.

Learned counsel for the appellants/claimants has challenged the impugned award on the issue of quantum by urging that the Tribunal wrongly assessed the monthly income of the deceased at only Rs.15,000/- per month despite the fact that the income tax returns (hereinafter called 'ITR') of the deceased had been duly exhibited for the assessment year 2011-12 and also the preceding few years wherein it stood revealed that the deceased was earning Rs.2,36,710/- per annum and hence his income should have been assessed at atleast

Rs.20,000/- per month. He also contends that the Tribunal erred in denying compensation to appellants No.2 to 7 i.e. sons of the deceased. Still further, even under the conventional heads the claimants had not been awarded adequate compensation as per the settled law in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270*** and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others : 2018(4) RCR (Civil) 333***. He further submits that since the claimants were seven in number (widow and six sons of the deceased) deductions to the extent of 1/5th towards personal expenses should have been made while awarding the compensation which were erroneously not done by the Tribunal.

Per contra, learned counsel for the insurance company while vehemently opposing the prayer and submissions made by the counsel opposite, submits that it is not believable that the deceased who was about 100 years of age would have been working and earning Rs.2,36,710/- per annum as claimed by the appellants/claimants. He submits that the Tribunal had thus rightly assessed the income of the deceased at Rs.15,000/- per month. He further submits that since the sons of the deceased were more than 50 years of age, they were not entitled to any compensation much less parental consortium on account of the death of their father i.e. the deceased, who admittedly was nearing 100 years of age.

I have heard learned counsel for the parties and perused the material on record.

It is not disputed rather it is a matter of record that the deceased was an income tax payee as his ITRs Ex.P-7 to Ex.P-9 were duly produced before the Tribunal. As per Ex.P-9 i.e. the ITR of the deceased for the assessment year 2011-12, his income was shown to be Rs.2,36,710/- per annum. This Court does not concur with the observations made by the Tribunal that it was a mere paper transaction carried out in the name of the deceased to derive undue benefit and save taxes, and hence the ITRs could not be taken to be true and genuine evidence qua the source of income of a 100 year old man. It needs to be observed that there is no challenge made qua the genuineness or authenticity of the ITRs filed by the deceased. The only allegation levelled is that it cannot be believed that the deceased would have been earning any income at the age of 98 years. As long as there is an authentic document produced and exhibited before the Tribunal with respect to the income of a person, a Court cannot go into the authenticity or genuineness or otherwise of such document unless and until of course the some evidence is brought to the fore that some objections had been raised or the income tax authorities had themselves found them to be a sham transaction. In the circumstances, keeping in view the income Ex.P-9 for the assessment year 2011-12 i.e. the year when the deceased lost his life in the accident in question, his income can safely be assessed at Rs.20,000/- per month. Since, the claimants are seven in number, 1/5th shall have to be deducted qua personal expenses. The submissions of the learned counsel for the respondent that the claimants/appellants No.2 to 7 were not entitled to any compensation as they were all majors, is bereft of any merit. The fact of the matter is that irrespective of the age of appellants No.2 to 7, the deceased was their father and hence they would also be entitled to compensation for loss of parental consortium.

Further, the Hon'ble Supreme Court in ***Pranay Sethi's case*** *(supra)* has quantified the amount in the sum of Rs.15,000/- each for loss of estate and funeral expenses in addition to Rs.40,000/- each for loss of consortium. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement *qua* the above-mentioned conventional heads, as was also re-assessed by the Hon'ble Supreme Court in ***Rasmita Biswal and others Vs. Divisional Manager, National Insurance Co. Ltd. and another : 2022(1) RCR(Civil) 344*** as per the ratio laid down in ***Pranay Sethi's case*** *(supra)*. Hence, the amount of compensation under the convention heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. Besides this, the claimants, who are widow and six children of the deceased, are entitled to Rs.44,000/- each, for loss of spousal and parental consortium, respectively.

The compensation thus payable to the claimants would be as follows:-

S.N.	Head	Amount
1.	Monthly income	Rs.20,000/-
2.	Annual income	Rs.2,40,000/- (20000 x 12)
3.	Deduction (1/5th)	Rs.48,000/- (240000 / 5)
4.	Loss of annual future earnings	Rs.1,92,000/- (240000-48000)
5.	Multiplier	5
6.	Loss of future earnings	Rs.9,60,000/- (192000 x 5)
7.	Loss of consortium (spousal and parental)	Rs.3,08,000/- (44000 x 7)
8.	Funeral expenses	Rs.16,500/-
9.	Loss of estate	Rs.16,500/-
10.	Medical expenses	Rs.20,000/-
	Total compensation	Rs.13,21,000/-

The claimants are, therefore, held entitled to a total sum of Rs.13,21,000/- as compensation along with interest @ 9% per annum from the date of filing of claim petition till its actual realization. Out of the total compensation amount, Rs.44,000/- be disbursed each to appellants/claimants No.2 to 7 being sons of the deceased. Rest of the amount be disbursed to appellant/claimant No.1 being widow of the deceased.

With these modifications, the present appeal stands disposed of in the above terms.

16.05.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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