IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4050-2016 (O&M)and
XOBJC-121-2022

Reserved on: 20.12.2022

Pronounced on: December 23 , 2022

The OrientalInsurance Company Ltd. …Appellant

Versus

Kuldeep Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. D.P. Gupta, Advocate for the appellant.

Mr. Ashwani Arora, Advocate
for the respondents No. 1 to 4.

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HARKESH MANUJA, J.

This order of mine shall dispose of an appeal filed at the instance of Insurance Company impugning the award dated 08.04.2016passed by learned Motor Vehicle Accident Claims Tribunal, Chandigarh(hereinafter referred to as "the Tribunal") as well as cross-objections filed therein byrespondents No. 1 to 4- claimantsseeking enhancement of compensation.

Brief facts of the case are that respondents No.1 to 4- claimants (hereinafter referred to as "respondent No.1 to 4"), on account of death of Mukesh Pundir in a road accident occurredon 09.09.2015, filed a claim petition alleging rash and negligent driving on the part of respondent No.5 while driving the offending vehicle i.e. Car bearing registration No. HR-15-G-0002. The learned Tribunal vide award dated 08.04.2016 granted

Rs.18,45,000/- along with interest @7.5% per annum as compensation in the following manner:-

Sr.No.	Particulars	Amount(Rs.)
1.	Loss of Dependency	Rs.16,20,000/-
2.	Expenses incurred on Transportation, funeral and last rites	Rs. 25,000/-
3.	Loss of love and affection	Rs.2,00,000/-
	TOTAL COMPENSATION:	Rs.18,45,000/-

In the present appeal, the appellant- Insurance Company has challenged the award dated 08.04.2016 by questioning the quantum of compensation. On the other hand, respondentsNo. 1 to 4 have filed cross objections praying for enhancement of the same.

Learned counsel for the appellant/Insurance Company submits that learned Tribunal wrongly assessed notional income of the deceased @ Rs10,000/- per month and the same was liable to be reduced. He further contends that as the deceased was not earning anything at the time of accident, therefore, future prospects should not be granted on the notional income. He also submits that compensation awarded under the head of 'loss of love and affection' wasalso liable to be deducted.

On the other hand, learned counsel forrespondentsNo. 1 to 4 submits that considering the educational qualification of the deceased, his notional income should have been considered atleast @ Rs 20,000/- per month. He further contends that the deduction made onaccount of personal expenses of the deceased should have been 1/3rd instead of ½. He also contends that nothing has been awarded on account of 'loss of consortium' and appropriate amount should be granted under the said head along with other conventional heads.

Having heard the arguments advanced by learned counsel for the parties and gone through the paper-book as well as cross- objections.I am unable to accept the submissionsmade on behalf of learned counsel for the appellant with regard to notional income of deceased. Though the deceased died at the young age of 22 years and was not earning anything at that point of time, however, while making the assessment of income, the further economic losshas to be made afterconsidering various factors like educational qualification and family background etc.

In this context, it is paramount to consider that the deceased,at the time of accident, was pursuing Bachelor of Computer Application from Kurukshetra University. It would not be too much to assume that had the said accident not taken place, deceased would have earned handsomely. In this regard, an inference can also be drawn from minimum rates of wages for highly skilled labour in the State of Haryana in the year 2015 which was around Rs.9,700/- per month. Hence, considering the fact that the deceased at his young age was pursuing professional course in the field of computer education,I am of the view that his incomeought to have been assessed @Rs 13,000/- per month.

The next question which isrequired to be considered by this court is whether anything further is required to be added towards future prospects or not? Considering the facts and circumstance of the present case, it is equitable to believe that the deceased would have progressed in life, based on his educational skills, had this accident not taken placeand his salary would have definitely increased with the passage of time. It cannot be denied that rise in cost of living has also to be considered while making assessment of income for future. Therefore, grant of future prospects cannot be denied to deceased who, though was not earning anything at the time of his accident and his income was assessed notionally.

My aforesaid view is derived from the judgment of Hon'ble the Supreme Court in the case of **"Smt. Meena Pawaia and Others vs. Ashraf Ali and Others",** reportable as 2022(1) RCR (Civil) 222. In the aforesaid decision, Hon'ble the Supreme Court had the occasion to deal with the above-mentioned issue and it has been held that future prospects cannot be waived off in cases where notional income has been taken. The relevant portion of paragraph 11 of aforementioned judgment is reproduced hereunder:

> "11……*Because the price rise does affect them also and there is always an incessant effort to enhance one's income for sustenance. It is not expected that the deceased who was not serving at all, his income is likely to remain static and his income would remain stagnant. As observed in Pranay Sethi (Supra) to have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Therefore, we are of the opinion that even in case of a deceased who was not serving at the time of death and had no income at the time of death, their legal heirs shall also be entitled to future prospects by adding future rise in income as held by this court in the case of Pranay Sethi (supra) i.e. addition of 40% of the income determined on guesswork considering the educational qualification, family background etc., where the deceased was below the age of 40 years………"*

Accordingly, in my view, learned Tribunal has rightly granted future prospects, however, in view of above-mentioned judgment, the same should be awarded @40% instead of 50%.

So far as deduction on account of personal expenses is concerned, bachelor- deceased has been of 22 years at the time of accident and claimants are his elder brothers and sister, therefore, deduction of ½ to remain intact.

Besides this, with respectto the compensation awarded under the other conventional heads, byapplying the principles of law laid down by Hon'ble Supreme Court in**"National Insurance Company Limited Vs. Pranay Sethi and Others",**reported as 2017(4) R.C.R CIVIL 100**,** the claimants areentitled forRs.16,500/-as compensation under the head of funeral expenses (instead of Rs. 25,000/-) as well as a sum of Rs.16,500/- towards loss of estate.

So far as grant of compensation under the head of 'loss of consortium' is concerned, learned counsel for the appellant pressed upon the fact that since claimants are brothers and sister of deceased, therefore, loss of consortium (filial, parental and spousal) cannot be granted to them. In this regard, I deem it appropriate to refer to the judgment of Hon'ble the Supreme Court in the case of **"Magma General Insurance Co. Ltd. vs Nanu Ram Alias Chuhru Ram and others"**, reported as 2018(4) RCR (Civil) 333, wherein Hon'ble Apex Court granted filial consortium to sister of deceased. Relevant portion of para 8.7 of abovementioned judgment is reproduced hereinbelow: -

> *8.7……..."Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An*

> *accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit……" (emphasis supplied)*

Perusal of the abovereflects that filial consortium is not only restricted to the parents but it is wide enough to include siblings as well. Furthermore, young brothers and sisters need each other's strength and association in their everyday life to offercommon experiences and unfortunate death of any of the siblings is likely to be traumatic and harmful. Therefore, in my view, an amount of Rs.44,000/- each is required to be awarded on account of 'Loss of consortium' to respondents No.1 to 4 who are brothers and sister of deceased, based on well settled principle in the judgments of Hon'ble the Supreme Court in **Pranay Sethi's** (supra) and **Magma's** case (supra).

Further, besides it, award of compensation under the head of 'loss of love and affection' is liable to be set aside in view of the law laid down by the Hon'ble Supreme Court in case of **"Satinder Kaur @ Satwinder Kaur & Others Versus United India Insurance Co. Ltd.",** reported as 2020(3) R.C.R Civil 75.

No other argument has been raised.

Thus, in view of the discussions made hereinabove, the respondents No.1 to 4are entitled for following compensation: -

Sr.No.	**Particulars**	**Amount(Rs.)**
1.	Annual income (Rs.13,000/- X 12)	Rs.1,56,000/-
2.	Future prospects @40%	Rs.62,400/-
3.	Deduction of ½ on account of personal expense(Rs.1,56,000+Rs.62,400=Rs.2,18,400)	Rs.1,09,200/-

4.	Multiplier of 18 as per age of 22 years	Rs.19,65,600/-
5.	Funeral expenses	Rs.16,500/-
6.	Loss of consortium (44,000 X 4)	Rs.1,76,000/-
7.	Loss of estate	Rs.16,500/-
	TOTAL COMPENSATION	Rs.21,74,600/-
	Amount awarded by Tribunal	Rs.18,45,000/-
	Enhanced amount	Rs.3,29,600/-

The grant of interest @ 7.5% per annum is not just in view of facts and circumstances of the present case; rather as per the observations made by Hon'ble the Supreme Court in case of **"Smt. Supe Dei and othersVs. National Insurance Company Limited and other"**, reported as 2009(4) SCC 513, approved in a subsequent judgment titled as **"Puttamma and others Vs. K.L. Narayana Reddy and another"**, reported as 2014 (1) RCR (Civil) 443, interest needs to be enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claims shall be deducted from the enhanced compensation.

The present appeal as well as the X-objections are disposed of in the manner indicated hereinabove.

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

(HARKESH MANUJA)
JUDGE

December 23, 2022
anil

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