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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO-8528-2014 (O&M)**

Date of Decision: 09.09.2022

Union of India .... Appellant

Versus

Anju and others .... Respondents

2. **FAO-203-2015(O&M)**

Anju and others …..Appellants

Versus

Union of India and others …..Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Rajvir Singh Sihag, Advocate
for the appellant-Union of India in FAO-8528-2014
& for respondent No.1 in FAO-203-2015.

Mr.Chanchal K. Singla, Advocate
for the respondents/claimants in FAO-8528-2014
& for the appellants in FAO-203-2015.

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HARKESH MANUJA, J.

This order of mine shall dispose of two appeals one bearing FAO No.203 of 2015 titled as Anju and others Vs. Union of India and others (filed by claimants/ appellants for enhancement of compensation), hereinafter referred to as ‘the claimants’ and another bearing FAO No.8528 of 2014 (filed by Union of India/ respondent for setting aside the award), hereinafter referred to as ‘the respondent’.

For convenience, the facts are taken from FAO No.203 of 2015 i.e. the appeal filed on behalf of claimants.

Accident in the present case took place on 23.01.2003 at about 7.30 a.m. in the morning. The deceased Jatinder @ Dimple while going on his Bajaj Chetak Scooter bearing registration No.PCP-550 for supply of milk was hit by the military vehicle (hereinafter referred to as 'offending vehicle') bearing registration No.255/95C 6575 IL being driven in rash and negligent manner by one A.C.Choberker (Driver). On account of multiple injuries received in the accident, Jatinder @ Dimple succumbed to death. At the time of accident, deceased was 29 years of age.

The appellants/claimants being dependents upon the deceased filed claim petition before learned Motor Accident Claims Tribunal, Patiala, for short "Tribunal" praying for award of compensation to the tune of Rs.35 lacs along with interest by alleging rash and negligent driving against the driver of the offending vehicle. The appellants claimed that the deceased was earning Rs.25000/- per month as he was running dairy and selling milk.

Learned Tribunal vide its award dated 18.10.2003 dismissed the claim petition filed at the instance of appellants by holding that accident did not take place on account of rash and negligent driving of the offending vehicle. The award dated 18.10.2003 was challenged by the appellants before this Court by way of filing FAO No.5185 of 2004 which was allowed vide judgment dated 23.04.2014 by reversing the findings on issue No.1 regarding rash and negligent driving. This Court vide judgment dated 23.04.2014 recorded that the accident took place on account of rash and negligent driving of the offending vehicle driven by respondent No.6 (in the present appeal). Accordingly, the matter was remanded back to the learned Tribunal for adjudication upon the quantum of compensation. It is in pursuance thereof, the award impugned in the present appeals was passed by learned Tribunal on 23.08.2014 awarding a sum of Rs.23,60,000/- as compensation in favour of the appellants along with interest at the rate of 7.5% per annum from the date of filing of the present petition till its realization. The learned Tribunal assessed compensation by taking monthly contribution of deceased towards house-hold expenses @ Rs.12000/- per month and after applying the multiplier of 16 considering the age of deceased as 29 years. The learned Tribunal also awarded Rs.6000/- towards funeral expenses and Rs.50000/- in lump sum on account of loss of love and affection and loss of consortium.

It is the said award dated 23.08.2014 which has been challenged by way of present two appeals.

It has been contended by learned counsel for the appellants that sufficient material has been placed on record so as to establish that the deceased was running a dairy and was earning around Rs.30000/- per month by selling milk. For the same, he relies upon the statements of PW1 (Anju, widow)) PW5 (Amrinder Singh, brother of the deceased) as well as register entries Exs.P1 & P2 regarding the sale of milk. He further contended that learned Tribunal has committed an error by calculating compensation on the basis of Rs.12000/- per month as the contribution of deceased towards house-hold. He also contended that the learned Tribunal has failed to consider the aspect of increase in future income while assessing the amount of compensation and even the multiplier of 17 was required to be applied in view of law laid down by Hon'ble Supreme Court in case of **Sarla Verma and others Versus Delhi Transport Corporation**, 2009 (3) RCR 77 considering the age of deceased to be 29 years. In addition, the appellants also assailed less amount awarded on account of funeral expenses as well as under the conventional heads.

On the other hand, learned counsel for the respondent-Union of India vehemently argued that once the contribution by deceased towards house-hold was taken to be Rs.12000/- per month in the year 2003 i.e. the year of accident, for making the annual contribution to be Rs.1,44,000/-, appropriate deduction towards income tax should have been made while assessing the amount of compensation. He further submitted that in the year 2003, the minimum slab for the purposes of payment of tax was Rs.50,000/- and in case income is between Rs.60,000/- to Rs.1,50,000/-, minimum of 20% was to be deducted towards income tax. He also submitted that Rs. 12,000/- per month as taken to be contribution by deceased towards his family was on the higher side.

Having heard learned counsel for the parties and after going through the paper-book as well as lower Court records, I am of the considered opinion that the contention raised by learned counsel for the respondent regarding making of appropriate deduction towards income tax on the amount of contribution made by deceased towards the house-hold or even upon his income, in the facts and circumstances of the present case, was not called for. From the evidence available on record, it has been duly proved that the deceased was earning his livelihood by running a small dairy by keeping buffalos and selling milk which apparently has to be taken as ancillary to agriculture and non-taxable in the facts of the present case. No legal document, besides the oral submission, has been produced on record to support the plea that a person running a small dairy and earning his livelihood by selling milk was supposed to pay income tax.

To support this argument, learned counsel for the appellant placed reliance on the judgment passed by this Court in case titled as **Bimla Devi Vs. PRTC and others**, 2006 (4) RCR (Civil) 230 to contend that income from selling of milk being ancillary to agriculture income was exempted from income tax. In this regard, learned counsel for the appellants made reference to para 6 of the aforesaid judgment and relevant part of the same is extracted hereunder:-

> *….However, I do not agree with the Motor Accident Claims Tribunal in rejecting the evidence merely on the ground that as no income tax was being paid by the deceased and to presume that he was not earning anything from the sale of milk. When the evidence has been brought on record showing the persons from whom he used to purchase the milk and also the person to whom he used to sell the same, at best,*

> *some cut could be imposed on the income for want of documentary evidence. However, I cannot lose sight of the fact that the agricultural income is exempted from the income tax and there is every possibility of a person of an ordinary prudence to think that the income derived from the jobs which are ancillary to the agriculture may be exempted from the income tax…...*

The judgment cited hereinabove fully supports the case of the appellants as **Bimla Devi's** case (supra) also happened to be a case of milk vendor. Thus, once the deceased was earning his livelihood by selling milk, the same being ancillary to agriculture, was exempted from the income tax and that too particularly when no judgment or case law or statutory provisions to the contrary was cited by the respondent. Thus, the argument raised by the respondent that an appropriate deduction on account of income tax was required to be made while assessing the compensation based on mere oral submissions, in the facts and circumstances of the present case, is devoid of any merit particularly, when there is nothing on record to establish that the deceased was selling milk at large scale to big concerns.

On the question of actual income of the deceased, learned counsel for the respondent-insurance Company has contended that amount of Rs.12000/- per month towards dependency is on the higher side and the statement of PW1 cannot be believed that the deceased was contributing Rs.12000/- per month towards household expenses, particularly when the Ld. Tribunal did not determine monthly income.

In the facts and circumstances of the present case, there is no force in this submission made by learned counsel for the respondent-insurance Company. There is sufficient oral as well as documentary evidence in the shape of statements of PW1 (Anju, widow), PW5 (Amrinder Singh, brother of deceased) RW1 (Naik Bhupender Singh) and RW2 (AC Chobarkar), besides the documentary evidence on record being receipts Exs.P1& P2 as well as photographs at pages 66/67 of the records, which clearly establish that the deceased was earning his livelihood by selling milk. PW1 has specifically stated that the deceased was earning around Rs.25,000/- per month by running a milk dairy and was having 20 buffaloes. This fact has been corroborated by PW5 (Amrinder Singh) also. Further, both RW1 (Naik Bhupender Singh) and RW2 (AC Chobarkar) in their examination-in-chief have also been very specific and categoric while stating that the deceased was carrying milk cane of the capacity of 30 liters to 40 liters on his scooter at the time of accident which itself supports the case of appellants/ claimants of deceased being a milk vendor. Even the photographs at page 67 of the records show milk lying spilled on the floor at the place of accident beside milk cane, therefore, establishing the fact that he was earning his livelihood by selling the milk thus, based on the evidence available on record it can be reasonably arrived at that the deceased was earning around Rs 15,000/- per month, at the time of accident.

Further, considering that the deceased was to support a large family including old aged mother, father, wife and two small children, dependency in the facts and circumstances was required to be ascertained by making deduction of 1/5th towards his own personal expenses. Applying the aforesaid deduction, on the monthly income of Rs 15,000/- per month, dependency shall come to Rs.12,000/- per month which even finds corroboration from the statement made by the widow i.e. PW-1 wherein she submits that the deceased used to give her Rs.12,000/- per month for household expenses. No evidence to rebut this aspect of the matter regarding contribution being made by deceased to the tune of Rs. 12,000/- per month has been led, not even by way of any suggestion to PW-1 in her cross-examination. Once the deceased was contributing Rs.12,000/- per month towards household, a judicial notice can be taken of the fact that besides household expenses, there are number of other miscellaneous expenses which are normally being incurred by a family of six members living under the same roof such as for their clothes, medicines, education, travelling etc., which would mean that the deceased in the present case was earning atleast Rs.15,000/- per month.

Since the deceased was running the business of dairy having income of Rs.15000/- per month and was aged about 29 years, so applying the multiplier of 17 instead of 16 as laid down in case in **Sarla Verma and others Versus Delhi Transport Corporation**, 2009 (3) RCR 77, future prospects of 40% are to be awarded in view of the judgment of Hon'ble Supreme Court in case titled as **National Insurance Company Ltd. Vs. Pranay Sethi and**

others, 2017 (4) RCR (Civil) 1009, wherein it has been held that in case of deceased being self-employed, addition of 40% of the established income has to be awarded where the deceased was below the age of 40 years. Relevant paragraph No.61 (iv) is reproduced hereunder:-

> *"61. (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

The learned Tribunal has also committed an error while awarding a meager sum of Rs.50,000/- in lump sum under the conventional heads. However, applying the principle of law laid down by Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, the claimants are entitled for Rs.16,500/- as compensation under the head of funeral expenses. Considering the fact that the deceased left behind a young widow, old parents and two infants, the consortium should have been awarded under three different heads of spousal consortium, filinial consortium and parental consortium, thus, making it to be Rs.44,000/- each for all five dependents i.e. Rs.44,000 x 5= Rs.2,20,000/- and Rs.16,500/- towards loss of estate by applying 10% increase under the conventional heads as well as under the head of consortium (spousal, parental and filinial) as per the law laid down by Hon'ble Supreme Court in ***N. Jayasree and others Vs. Cholamandalam M.S. General Insurance Company Ltd.***, 2021 (4) RCR (Civil) 642.

In view of the discussions made hereinabove, the appellants are entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	***Particulars***	***Amount (Rs.)***
1.	*Annual Income of deceased Rs.15000/-x 12)*	*Rs.1,80,000/-*
2.	*Add 40% of Future prospects*	*Rs.72,000 /-*
3.	*Total Income (Rs.1,80,000/- + Rs.72,000/-)*	*Rs.2,52,000/-*
4.	*Deduction (1/5th)*	*Rs.50,400/-*
5.	*Multiplier of 17 as per age of 29 years (Rs.2,01,600 x 17)*	*Rs.34,27,200/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium*	*Rs.2,20,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.36,80,200/-*
	Amount Awarded by the Tribunal	*Rs.23,60,000/-*
	Enhanced Amount	*Rs.13,20,200/-*

The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513, which were approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is 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 claimants shall be deducted from the enhanced compensation.

In view of the above, FAO-203-2015 (Anju and others Vs. Union of India and others) filed by the claimants for enhancing the compensation is partly allowed; whereas FAO-8528-2014 (Union of India Vs. Anju and others) filed by Union of India for setting aside the impugned award is hereby dismissed.

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

September 09, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

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