IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No. 717 of 2016 (O & M)
Date of decision : 1.9.2022

Anju Sharma and another ......**Appellants**

Vs.

Sukhwinder Kaur and others ......**Respondents**

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. G.S. Sidhu, Advocate, for the appellants

Mr. Rajneesh Malhotra, Advocate, for respondent No.3/ Insurance company

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TRIBHUVAN DAHIYA, J. (Oral)

CM No. 2110-CII of 2016:

This is an application for condonation of 7 days delay in re-filing the present appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 7 days in re-filing the present appeal stands condoned.

CM No. 2111-CII of 2016:

This is an application for condonation of 277 days delay in filing the present appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 277 days in filing the present appeal stands condoned.

Main Case:

1. This appeal has been filed by the appellants/claimants against the award dated 3.9.2014 passed by Motor Accident Claims Tribunal, Chandigarh (in short 'the Tribunal'), seeking enhancement of compensation.

2. Himanshu died in a motor accident while he was going on his

bicycle. The accident occurred on account of rash and negligent driving by driver of the offending vehicle/respondent No.1, as held by the Tribunal. It has further been held that the deceased was 13½ years of age at the time of accident and was studying in class 8th. His notional income has been assessed as Rs.30,000/-per month. By applying a multiplier of '15', compensation for loss of income has been assessed as Rs.4,50,000/-. Besides, the claimants have also been awarded a sum of Rs.50,000/-towards conventional heads (loss of love and affection, funeral expenses, last rites). In all, total amount of Rs. 5 lakhs has been awarded as compensation with interest @ 9% per annum from the date of filing of the claim petition till realisation of the amount.

3. Learned counsel for the appellant has argued that the compensation assessed is on lower side as the Tribunal has wrongly assessed notional income of the deceased. No amount has been awarded for future prospects, and the awarded amount towards conventional heads is also on lower side. *Per contra,* learned counsel for the respondent/ Insurance company has argued that the mandatory deductions towards personal and living expenses have not been made and the awarded amount needs to be reduced to that extent.

4. Learned counsel for the appellants has placed reliance upon the judgment of this Court in **FAO No. 5190 of 2014** titled as ***Seema and another v. Bhim Singh and another*** decided on **26.8.2019**, wherein the facts were similar as those of the instant case. The deceased in above case was of 8 years at the time of accident on 26.8.2019. The notional income of the deceased was assessed to be Rs.50,000/-per month, and based on that appropriate compensation was awarded. The paragraphs No.9 and 10 of the above stated judgment read as under:

> 9. Clause 6 of the second schedule to Section 163-A of the Motor Vehicles Act, 1988 refers to notional income of those persons who had no income prior to the accident, as would be in the case of minor child

> having no established income. Clause 6 allows notional compensation of Rs.15,000/- per annum to those who had no income prior to accident (non-earning person). However, subsequently in the case of ***Kishan Gopal and another (supra)*** the notional income was enhanced to Rs.30,000/- per annum, with a multiplier of 15 to be applied by relying upon the principles as settled in ***Sarla Verma vs. Delhi Transport Corporation, (2009) 6 SCC 121.*** However, in the case of ***Puttamma and others vs. K.L. Narayana Reddy and another, 2014(1) RCR (Civil) 443*** it has been observed by the Supreme Court that Second Schedule to Section 163-A of the Act was enacted w.e.f. 14.11.1994 had become redundant and unworkable due to the enhanced cost of living, current rate of inflation and increased life expectancy, however, it was left to the wisdom of the Legislature to make the necessary amendment.
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> 10. Therefore taking the view, that second schedule which was the basis of determining the notional income as per clause 6, pertained to the year 1994 when the cost of living and GDP index allowed a person to survive on a meager amount, the notional income can certainly be increased. With the passage of time, the cost of living has increased substantially. The State Government regularly enhances the minimum wages once in a year or some times twice. Even the Central Government enhances the dearness allowance of its employees after every six months. So, there can be no reason for not enhancing the notional income on the same principle, considering the fact that cost of living has increased many fold since 1994 and buying power of the rupee is diminishing. Taking all these aforesaid factors into account, the notional income of the deceased is enhanced to Rs.50,000/- per month. After applying the multiplier of 15 in terms of the judgment of the Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation(supra)*** the compensation comes to Rs. 7,50,000/-. After adding a sum of Rs.50,000/- under the conventional heads, it comes to Rs. 8,00,000/-.

5. In view of the law laid down as aforesaid, notional income of the deceased, who was 13½ years of age at the time of accident on 23.8.2013, is enhanced to Rs.50,000/-per annum. By applying the multiplier of '15' as per judgment of the Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation,*** **(2009) 6 SCC 121,** the compensation for loss of income to the claimants is assessed as Rs.7,50,000/- (50,000 x 15).

6. Further, the Supreme Court in ***Pranay Sethi* case *(supra)*** has held that reasonable figures under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% every three years. Accordingly, the respondent/claimants would be entitled to 10% enhancement with respect to compensation under the conventional heads; with 10% increase the amount under the conventional heads comes to Rs.16,500/-, Rs.88,000/- and Rs.16,500/- respectively.

7. On the above analysis, the appellants/claimants are held entitled to the following revised amount of compensation:

Sr. No.	Head	Amount (Rs.)
1	Annual Income and multiplier	50,000 x 15= 7,50,000
2	Loss of Estate	16,500
3	Loss of consortium (40,000 each)	88,000
4	Funeral Expenses	16,500
	Total compensation	**8,71,000/-**

8. The award passed by the Tribunal dated 3.9.2014, therefore, stands modified and appellants/claimants are held entitled to an enhanced amount of Rs.3,71,000/- (8,71,000 – 5,00,000) with interest at the rate of 9% from the date of filing the claim petition till its actual realization, which shall be jointly and severally paid in the same ratio as directed by the Tribunal.

9. All the pending miscellaneous applications, if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

1.9.2022
Ashwani

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No