

FAO-28-2019 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**XOBJC-247-2019 in/and
FAO-28-2019 (O&M)
Pronounced on : January 09, 2023**

The New India Assurance Company Ltd. ... Appellant

Versus

Shri Lal and others ...Respondents/Cross-objectors

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Vinod Gupta, Advocate for the appellant.

Mr. Vipul Sharma, Advocate
for respondent Nos.1 to 3-cross objectors-claimants

None for respondent Nos.4 and 5.

DEEPAK GUPTA, J.

This is an appeal filed by the Insurance Company against award dated 12.09.2018, whereby Motor Accident Claims Tribunal, Chandigarh has allowed compensation of ₹64,87,536/- on account of death of Rama Kant, in MACT No.458 of 2017 titled 'Shri Lal and others vs Shiv Dularey and others'.

2. The facts of the case, in brief, are that on 21.06.2017 at about 7 p.m., Rama Kant S/o Shri Lal along with his colleague Manoj Kumar was moving on foot on left side of road near railway Crossing Satarhi, Haidergarh, District Barabanki (UP), when a truck bearing registration No.UP-35T-1848 (hereinafter referred as 'offending vehicle') being driven by respondent Shiv Dularey came at high speed, in rash and negligent manner and struck against Rama Kant, who fell down. His head was crushed under the wheels of the offending vehicle, due to which he

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died on the spot. Manoj Kumar ran fast to the extreme left side and saved his life. FIR No.216 dated 21.06.2017 was registered under Sections 279, 337 and 304-A IPC at Police Station Haidergarh, District Barabanki.

3. Claimants are father and siblings of deceased Rama Kant. They sought compensation under Section 166 of the Motor Vehicles Act on account of death of said Rama Kant by pleading that deceased was 24 years of age on the date of accident and used to work as a Signal *Khallasi* at Rail Coach Factory, Rae Bareli, under Lucknow Division of Northern Railway and at the time of his death, he was drawing salary of ₹29,896/- per month. It was further pleaded that deceased was a graduate and was pursuing his Master's degree through correspondence from Punjab University.

4. All the respondents opposed the claim petition. Insurance Company also took the plea that driver did not have the effective and valid driving licence at the relevant time and that the offending vehicle was being driven in contravention of the terms and conditions of Insurance Policy.

5. Necessary issues were framed. After taking evidence perused by the parties and hearing both the sides, learned Tribunal came to the conclusion that accident was caused due to rash and negligent driving of the offending vehicle, which resulted into the death of Rama Kant. Salary Certificate Ex. C-10 showing ₹29,896/- per month as the last salary of the deceased, was taken to be the earnings of the deceased, to which 50% was added towards future prospects. As there were three number of claimants, so 1/3rd of the income was deducted towards personal expenses

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of the deceased. Multiplier of 18 was applied and total compensation was assessed at ₹64,87,536/-. Insurance Company failed to produce any evidence regarding not holding of the effective and valid driving licence by the driver or regarding its allegation of violation of the terms and conditions of the insurance policy. As such, all three respondents were held jointly and severally liable to pay compensation amount, which was allowed along with interest @ 7.5% per annum from the date of filing of the petition till its realization, vide impugned Award dated 12.09.2018.

6. Feeling aggrieved by the Award, Insurance Company filed this appeal. The two fold contentions made by learned counsel for the Insurance Company is that as the deceased was unmarried, so 50% amount of the earnings should have been deducted towards personal expenses as held by the Hon'ble Supreme Court in ***Sarla Verma (Smt.) & Others Vs. Delhi Transport Corporation & Another, (2009) 6 SCC 121.*** Claimant Nos.2 and 3 being siblings were not dependent upon the income of the deceased. Even claimant No.1 - father was not the dependent. Further, learned Tribunal failed to appreciate that out of ₹29,896/- per month being drawn by the deceased, an amount of ₹1,350/- was transport allowance and ₹5890/- was travelling allowance, which were not admissible or available to the family of the deceased being used for personal expenses of the deceased and so, these ought to have been deducted. Apart from this, income of the deceased comes under the income tax slab but no income tax has been deducted.

7. On the other hand, claimants filed cross objections submitting that no amount has been awarded towards loss of consortium

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and so, compensation amount needs to be enhanced by modifying the Award.

8. I have considered submissions of both the sides and have perused the record carefully.

9. The finding of learned Tribunal with regard to the negligence of the offending vehicle has not been challenged. The Insurance Company has also not assailed the finding of the Tribunal with regard to its liability. The only issue involved is regarding quantum of compensation.

10. It is not in dispute that as per salary certificate Ex. C-10 for the month of June, 2017, deceased Rama Kant working as Signal *Khallasi* with the Northern Railway, was drawing pay of ₹29,896/- per month. The bifurcation of the said amount in various heads is as under:-

Pay	-	₹19,700/-
D.A.	-	₹788/-
HRA	-	₹1,532/-
Transport Allowance	-	₹1,350/-
NHA	-	₹636/-
Travelling Allowance	-	₹5,890/-

11. The contention of learned counsel for the appellant-Insurance Company is that amount of ₹1,350/- as transport allowance and ₹5,890/- as travelling allowance were personal to the deceased and so, they should have been deducted while computing the earnings of the deceased. Reliance is placed upon the judgment of the Hon'ble Supreme Court of India in case ***“National Insurance Co. Ltd. vs Indira Srivastava & Ors.”*** 2008(1) R.C.R.(Civil) 359.

12. On the other hand, Ld. Counsel for cross-objectors –

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claimants contended that no such deductions can be made. He placed reliance on “*Sunil Sharma & Others vs. Bachitar Singh & Others*” 2011 ACJ 1441; “*Manasvi Jain vs Delhi Transport Corporation*” 2014(3) R.C.R. (Civil) 313; “*Shyamwati Sharma & Ors. vs Karam Singh & Ors.*, 2010 (3) R.C.R. (Civil) 741; and *Vimal Kanwar and others vs Kishore Dan and others*”

13. In *Indira Srivastava (supra)*, Hon'ble Supreme Court has observed as under:

“8. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks, which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

9. [Section 168](#) of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be

determined.

"19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted. ”.

In the above case before Hon’ble Apex Court, the Tribunal opined while computing the income of deceased that the element of conveyance allowance would fall outside the purview of income. The High Court, on an appeal having been preferred both by the appellant as also the respondents, partly allowed the same by holding that travelling reimbursement could not be taken into consideration for computation of net income of the deceased.

14. On the other hand, in “*Manasvi Jain’s case (supra)*”, Hon’ble Supreme Court by referring to “*Shyamwati Sharma’s case (supra)*” held that while arriving at net income of the deceased for the purpose of deciding net monthly income, deduction towards various heads i.e. G.P. fund, house rent, insurance should not be excluded from the salary except the income tax. In *Vimal Kanwar’s case (supra)*, deceased was a government servant and an income tax payee. It was held by the Hon’ble Supreme Court that provident funds & insurance received by the claimant cannot be termed pecuniary advantage and liable to be deducted, as these amounts do not come within the periphery of the Motor Vehicles Act to be termed as pecuniary advantage liable for deduction.

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15. In **Sunil Sharma Vs. Bachitar Singh (supra)**, Hon'ble Supreme Court referred to an earlier judgment titled **Raghuvir Singh Matolya Vs. Hari Singh Malviya (2009-15) SCC 363**. It was held therein that dearness allowance and house rent allowance should be included for the computation of the income of the deceased. Hon'ble Supreme Court referred to also **National Insurance Co. Ltd. Vs. Indira Srivastava AIR 2008 SC 845**, wherein it was held that the term "income" has different connotation for different purposes. Hon'ble Supreme Court concluded that income of the deceased government servant is to be assessed on the basis of gross salary without making deductions on account of HRA, CCA, medical allowance, EPF and GIS.

16. In **Sebastiani Lakra Vs. National Insurance Company Ltd. 2018(4) R.C.R. (Civil) 837**, a three Judges Bench of Hon'ble Supreme Court authoritatively held that deductions cannot be allowed from amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of deceased. Hon'ble Supreme Court held that these amounts are earned by deceased on account of contractual relations entered into by him with others and it cannot be said that these amounts accrued to the deceased or legal heirs of deceased on account of his death in motor vehicle accident.

17. It emerges from the legal position as above that though the dearness allowance, house rent allowance, CCA, medical allowance, EPF, GIS and insurance are to be treated as part of salary of the deceased and should be included for computation of his monthly income as that

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would have been added to his monthly income by way of contribution to the family but the other allowances like conveyance/transport allowance & travelling reimbursement/ travelling allowance, being personal to the deceased, cannot be taken into consideration.

18. However, where after making the deductions as above, it is required to be seen that whether remaining part of income, falls within the income tax slab or not. In this regard, Hon'ble Supreme Court in ***Vimal Kanwar's case (supra)***, has observed as under:

“21. The third issue is “whether the income tax is liable to be deducted for determination of compensation under the [Motor Vehicles Act](#)”

In the case of ***Sarla Verma & Anr.(Supra)***, this Court held “generally the actual income of the deceased less income tax should be the starting point for calculating the compensation.”

This Court further observed that “where the annual income is in taxable range, the word “actual salary” should be read as “actual salary less tax”. Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determination of the actual salary. But while deducting income-tax from salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head “salaries” one should keep in mind that under [Section 192](#) (1) of the [Income-tax Act](#), 1961 any person responsible for paying any income chargeable under the head “salaries” shall at the time of payment, deduct income-tax on estimated income of the employee from “salaries” for that financial year. Such deduction is commonly known as tax deducted at source (‘TDS’ for short). When the employer fails in default to deduct the TDS from employee salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under [Section 201\(1A\)](#) of the Income-tax Act, 1961.

Therefore, in case the income of the victim is only from “salary”, the presumption would be that the employer under [Section 192](#) (1) of the Income- tax Act, 1961 has deducted the tax at source from the

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employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee.

However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income."

In view of the aforesaid legal position, it is held that in present case, transport allowance & travelling allowance is required to be deducted from the total salary of the deceased and that tax liability is liable to be taken into consideration..

19. After making deductions of ₹1350/- towards transport allowance and ₹5890/- towards travelling allowance from the salary of ₹ 29,896/-, the remainder works out to be ₹22,656/- per month, i.e. ₹ 2,71,872/- per annum. As deceased had a permanent income while working as Signal *Khallasi* in the Northern Railway, so 50% income is to be added towards future prospects as per constitutional Bench judgment rendered by Hon'ble Supreme Court in ***National Insurance Co. Ltd vs. Pranay Sethi*** 2017 (13) Scale 12, wherein it has been held as under:-

"61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(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

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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.

20. In present case, deceased was less than 40 years of age and had a permanent job in Northern railways and so, 50% income is to be added towards future prospects. After adding 50% (₹1,35,936/-) to the net income of ₹2,71,872/- of the deceased, total income works out to be ₹4,07,808/-.

21. There was no tax liability on the deceased till the income of ₹2,50,000/-. On the rest of the amount, income tax @ 10% works out to be ₹15,780/-. After deducting the income tax payable by the deceased, income for assessing the compensation comes out at ₹3,92,028/- per annum.

22. Deceased was admittedly a bachelor. In *Sarla Verma vs. DTC 2009 (2) AICJ 2*, with regard to the deductions to be made in case of a bachelor, it has been held as under:

“15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because

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they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

23. In present case, there is neither any pleading nor evidence that deceased left behind his mother as a legal heir or not. So, it is presumed that mother had pre-deceased the deceased. It is urged by Ld. Counsel for the cross-objectors/claimants that Tribunal has rightly made one third deductions towards self expenses of the deceased, as all three claimants were dependent upon the deceased. Contention of the appellant - Insurance Company is that as deceased was bachelor, so there should be one half deduction for personal expenses

24. There is no merit in the contention of the claimants. Although, it has come in the testimony of CW1 Shri Lal, one of the claimants and father of the deceased that he is unemployed being sick but he did not produce any evidence so as to show his sickness of such a nature due to which he cannot earn. He is just 47 years of age and so, it is not believable that he is not earning. Besides, he i.e. father was residing with the elder son, who is earning being labourer, as per statement of CW1.

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25. In these circumstances, 1/3rd deduction is not justified. Deduction of ½ will be applicable. After making ½ deduction, loss of dependency works out to be ₹1,96,014/-. Admittedly, deceased was 24 years of age at the time of death and so, multiplier of 18 has been rightly applied. Compensation works out to ₹1,96,014/- x 18 = ₹35,28,252/-

26. In ***Pranay Sethi (supra)***, while allowing ₹40,000/- for loss of consortium; ₹ 15,000/- for funeral expenses and ₹15,000/- for loss of estate, it was held that these amounts should be enhanced @ 10% in every three years. Said addition was also allowed by Hon'ble Supreme Court in **N. Jayshree & others Vs. Chola Mandalam MS General Insurance Company Ltd., 2021(4) RCR (Civil) 642.**

27. In view of above, it is held that the compensation towards funeral expenses & loss of estate are to be allowed with 10% increase in the amounts as above i.e. ₹16,500/- for funeral expenses and ₹16,500/- for loss of estate.

28. It has been held in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram, (2018) 18 SCC 130*** that the word 'consortium' includes spousal consortium, parental consortium as well as filial consortium. Referring to the said authority, it has been further held by Hon'ble Supreme Court in ***United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur & others, 2020(3) R.C.R. (Civil) 75***, as under:-

[“In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors., \(2018\) 18 SCC 130: 2018\(4\) RCR \(Civil\) 333](#) this Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of

the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training.

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 and affection, and their role in the family unit.

Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

[The Motor Vehicles Act, 1988](#) is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents.

The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi (supra)."

29. Having regard to the legal position as above, the claimants being father and siblings of the deceased cannot be denied the compensation under the head of loss of parental/filial consortium on account of death of their son/brother. So, they are held entitled to ₹ 44,000/- each towards loss parental/filial consortium.

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30. In view of the above discussion, the compensation allowable to the claimants is as under:-

Sr. N:	Head of Compensation	Amount
1	Loss of dependency	₹35,28,252-
2	Loss of filial/ parental consortium	₹ 1,32,000/- (₹44,000 each)
3	Funeral Expenses	₹16,500/-
4	Loss of Estate	₹16,500/-
Total:		₹36,93,252/-

31. As such, the appeal of the Insurance Company is accepted by modifying the Award of the Tribunal to the extent as above; whereas cross-objections filed by the claimants are also accepted allowing the compensation on account of loss of parental/filial consortium.

January 09, 2023
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No