IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 1049/1992 (O&M)

Date of decision: 28 /02/2023

Madan Mohan Soi and another

………………Appellants

Vs.

Harbans Lal and others

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vidul Kapoor, Advocate with
Ms. Gauri Handa, Advocate for the appellants.

Service upon respondents 1,2 and 4 dispensed with vide order dated 20.12.2016.

Mr. Ravinder Arora, Advocate for respondent no.3- National Insurance Company.

Mr. RK Bashamboo, Advocate for Oriental Insu.Co., Respondent no.5.

Nidhi Gupta, J.

Alongwith present appeal, an application (which is not numbered) under Order 41 Rule 27 CPC has been filed seeking permission to lead additional evidence by way of Annexures A-1 to A-11. Annexures A-1 to A-5 are 5 Gold Receipt Vouchers; and Annexures A-6 to A-10 are 5

Gold Issue vouchers; and Annexure A-11 is a certificate issued by Oriental Bank of Commerce.

This application for additional evidence is vehemently opposed by the ld. Counsel for the Insurance Company. It is submitted that the additional evidence sought to be placed on record by the appellants by way of documents Annexures A-1 to A-11, was in the possession and knowledge of the appellants at the time of filing of claim petition and therefore, the said documents should not be permitted to be placed on record as the same would amount to blatant misuse of due process of law.

It is further submitted by the learned counsel for the Insurance Company that Order 41 Rule 27 stipulates as follows: -

> ***27. Production of additional evidence in Appellate Court.*** *- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-*
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> *(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*
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> *[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at*

the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

I find merit in the submissions made on behalf of the ld. Counsel for the respondent. Perusal of the Annexures A-1 to A-11 show that they all pertain to the period from 25.2.1991 to 5.3.1991 i.e. prior to the accident that took place on 22.3.1991. Accordingly, the said documents were well within the knowledge of the claimants and ought to have been produced before the ld. Tribunal. Moreover, instant application does not disclose any reasons whatsoever as to why the said documents were not/ could not be produced before the ld. Tribunal. Order 41 Rule 27 above shows that the present application does not come under the purview of the said provision. Hence, present application is, dismissed.

Main Appeal:

Claimants/appellants-parents of deceased Yogesh Mohan have filed this appeal seeking enhancement of compensation of Rs.1,70,600/- granted vide Award dated 9.5.1992 passed by Motor Accident

Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal') in MACT Case NO.36/1991 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Brief facts of the case are that the Ld. Tribunal on the basis of pleadings and evidence before it concluded that deceased Yogesh Mohan had died in a motor vehicular accident that took place on 22.3.1991 due to the rash and negligent driving of truck bearing registration No. HRP 5691 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.2, owned by respondent no.1 and insured by respondent no.3.

Ld. Tribunal awarded compensation as noticed above along with interest @ 15% per annum with effect from the date of filing of the claim petition till realization, and it was further directed that Award shall be satisfied by respondent Insurance Company.

Learned counsel for the appellants seeks enhancement on the ground that the income of the deceased has been taken on lower side as only Rs.3010/- per month. It is submitted that the deceased was in the employment of NK Jewellers since 15.2.1988 as is evident from letter of appointment Ex.P4, issued by the employer of the deceased. It is submitted that no doubt, the deceased was earning Rs.3010/- per month, as employee of NK Jewellers, as evident from Certificate Ex.P2 issued by the employer of the deceased, however, 21 days prior to the accident the deceased had left the employment of NK Jewellers and had opened his own establishment under the name and style of 'Yogesh Mohan & Company Jewellers as evidenced from the balance sheet of the said firm placed before the ld. Tribunal as Ex.P3. It is submitted that a perusal of the said balance sheet shows that firm of the deceased had earned a profit of Rs.10923/-. It is submitted that therefore, the ld. Tribunal was in error in taking the income of the deceased as only Rs.3010/- per month on the basis of his salary certificate Ex.P2.

It is further submitted that the fact that the deceased had started his own business on 1.3.1991 is corroborated by the statement of PW2 who was also an employee of the former employer of the deceased namely NK Jewellers. It is stated that even former employer of the deceased had categorically stated in letter Ex.P5, that the deceased had started his private business with the knowledge and consent of the said employer. It is submitted that it is therefore, established that balance sheet Ex. P-3 showing profit of Rs. 10,923/- was authentic and therefore, income of the deceased ought to have been taken as Rs.10,000/- per month.

It is further submitted that the ld. Tribunal has made a deduction of 1/3rd on account of personal expenses on the reasoning that the deceased was of marriageable age and if the unfortunate accident had not taken place the marriage of the deceased would have been performed within a few years. It is submitted that in view of the fact that the claimants before the ld. Tribunal were three in number a deduction of 1/5th ought to have been made towards personal expenses. It is then submitted that deceased was only 23-1/2 years of age at the time of his death and therefore, the ld. Tribunal ought to have applied multiplier of 18 whereas multiplier of 16 has been applied.

Per contra, Ld. Counsel for the Insurance Company submits that there is no evidence, whatsoever, on record to prove the income of the deceased. It is submitted that the ld. Tribunal has rightly taken the income of the deceased as Rs.3010/- per month on the basis of salary certificate Ex.

P2. It is submitted that balance sheet Ex. P3 on the basis of which the appellants are seeking enhancement of income of the deceased is not a reliable document as such a document can be easily prepared by anyone. It is further submitted that the deceased was bachelor at the time of his death and therefore deduction of 50% was correctly made. Learned counsel for the Insurance Company very fairly submits that the appellants are entitled to 40% increase towards future prospects, as also multiplier of 18 should have been applied in conformity with the judgments of the Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104;** and **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680.**

Heard ld. Counsel for the parties.

A perusal of the record of the case shows that as per Ex.P4 at page 67 of the LCR, the deceased is shown to be in the employment of NK Jewellers from 21.2.1988 to 31.3.1991. From Ex.P2/ Certificate issued by employer of the deceased, it is clear that the deceased was drawing salary of Rs.3010/- per month. Great reliance has been placed by the appellants on Ex.P3 at page 65 of the LCR, purported balance sheet of Yogesh Mohan & Co. Jewellers for the period from 1.3.1991 to 31.3.1991. However, in my view the said document and the purported profit depicted therein, cannot be relied upon as the same is merely an unaudited "Trial Balance as on 31.3.1991"/ kacha khata, containing few Debit/Credit entries relating to the accounts of the alleged private concern of the deceased. Further, no independent evidence with regard to these documents has been led by the claimants.

Further, testimony of PW2 Rajiv Khanderwal who has stated that deceased had started his own private work, is available at pages 119 to 121 of the LCR and the same shows that it has merely been stated that "*I heard that Yogesh Mohan was doing his private work as well from 1.3.1991. He had started supplying Readymade jewellery to M/s NK Jewellers as well.*" Perusal of the cross-examination of the said witness reveals that PW2 was working with M/s NK Jewellers since 1977 and was drawing salary of Rs.3000/- only per month. On the other hand, as per testimony of PW2 in his cross-examination, it has been stated that deceased had joined the firm NK Jewellers in October 1990 and was working under PW2, and had started with the pay of Rs.3010/-. In my view, even the said testimony of PW2 falsifies the case put forth by the appellants as, it is incongruous that the deceased who was working as a junior to PW2 would be starting at a pay of Rs. 3010/- whereas, PW2 who had been working since 1977 was just drawing a salary of Rs. 3000/-.

As regards the second argument of the learned counsel for the appellant that deduction of 1/5th ought to have been made, the same is liable to be rejected in view of the fact that the deceased was a bachelor at the time of his death and hence, deduction of 50% has been correctly made towards personal expenses.

As regards the applicability of multiplier in this case, I concur with the submission of the ld. Counsel for the appellants that in view of judgment in **Sarla Verma's case (supra)** multiplier of 18 ought to have been applied; besides addition of 40% towards future prospects has to be granted as per judgment in **Pranay Sethi's case (supra).** Accordingly, the compensation payable to the claimants is reworked as under:-

Sr.No.	Head	Amount (in Rupees)
1	Monthly income	3010
2	Future prospects @ 40%	1204
3.	Monthly income	4214
4	Less 50% deduction	2107
5	Multiplier	18
6	Total dependency	2107x12x18=4,55,112
7	Parental consortium being parents of the deceased	88000/-
8.	Funeral expenses	16,500/-
9	Loss of estate	16,500/-
10.	Interest	@ 6% per annum
11	Total compensation	5,76,112/-
12	Less awarded by the Tribunal	1,70,600/-
13	Enhancement	4,05,512/-

Appellants are held entitled to interest @ 6% on enhanced compensation from date of filing claim petition till realization. Ratio of apportionment, and manner of disbursement, and liability to pay the compensation, as determined by the ld. Tribunal is maintained.

Disposed of accordingly.

28/02/2023 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**