

2023:PHHC:069407

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3996-2004 (O&M)
Date of Decision: May 12, 2023

Ramni Chopra and others

...Appellants

VERSUS

Kashmiri Lal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Arun Abrol, Advocate
for the appellants.

Mr.Sushil Sharma, Advocate
for respondent No.2.

Mr.Vinod Gupta, Advocate
for respondent No.3

ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated 26.04.2004 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted to the appellants-claimants, on account of death of Purinder Kumar Chopra, in a motor vehicular accident.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.2,02,000/-, along with interest @9% per annum to the appellants-claimants.

Being dissatisfied with the extent of compensation, so granted, the appellants-claimants have filed the present appeal, thereby, seeking enhancement of the compensation.

The facts in brief, for disposal of the present appeal, are as follows:-

That, on 27.11.2001, at about 3.00 p.m., Purinder Kumar Chopra was standing at Bus Stand, Kalka. A tractor trolley bearing registration No.HR-49-3608, driven by respondent No.1-Kashmiri Lal, came there from Parwanoo Side. The driver lost control over the tractor and said tractor trolley, went on wrong side of the road and ran over two-three persons, including Purinder Kumar Chopra. Thereafter, the tractor had struck against a Maruti car bearing registration No.CH-01Y-1609 and Maruti van bearing registration No.HR-37-0758. Said Purinder Kumar Chopra died instantaneously.

On account of the aforesaid accident, which resulted into death of Purinder Kumar Chopra, the appellants-claimants, who are widow and son of the deceased had filed claim petition under Section 163A of the Motor Vehicles Act, claiming compensation. That implied that the second Schedule to the Act, introduced by way of an amendment in 1994, had to be adhered to.

Before proceeding further, it should be noted that Section 163-A of ibid Act has an overriding effect, which provides for special provision for payment of compensation on structured formula basis. However, at the

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same time, it should also be noted that clause-3 of Section 163A of the *ibid* Act provides that ‘**Central Government may, keeping in view the cost of living by the Notification, in the Official Gazette, from time to time, amend the second schedule.**’

In the light of the aforesaid provision of law, learned counsel for the appellants has contended that the compensation awarded by presuming the income of the deceased notionally as Rs.3,000/- per month, is not just and fair. It is submitted that even the provision for upper cap of Rs.40,000/- per month as notional income, has also not been taken into consideration. Even, this cap of Rs.40,000/-, as so provided in the year 1994, somehow, has not been further enhanced and the same continued in the statute, without any amendment, in spite of repeated directions by the Courts.

In view of the submissions, so made, it is pertinent to mention that in view of the provision of Section 163-A(3) of the *ibid* Act, though it was obligatory, on the part of the Government, to amend Schedule-II, same as fixed in the year 1994, continued till then. In the light of the same, it requires that the notional income, as fixed, should be considered, taking into account the increase in the ‘**cost of living**’.

In the case in hand, the deceased is claimed to be running business in the name of M/s Himgiri Enterprises at Parwanoo and he was stated to be income tax payee. The income tax return has been placed on record as Mark-A. Considering the fact that no official, as such, has been

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examined from the Income Tax Department and also considering that no other document has been proved on record, the income of the deceased has been taken as Rs.3,000/- per month. 1/3rd was deducted as personal expenses from the earnings and dependency of the claimants was assessed to be Rs.24,000/-. Keeping in view the age of the deceased, the multiplier of '8' was applied and the compensation, was worked upon as Rs.1,92,000/-. Besides the same, another some of Rs.10,000/- was given as '**funeral expenses**' and '**loss of consortium**'. Thus, in total, the amount of compensation, worked upon was Rs.2,02,000/-.

Considering this extent of compensation, so worked upon, definitely, it was on lower side. Schedule-II of the ibid Act remained unaltered between 1994-2001, when the accident took place. It is reasonable to expect that said notional amount, ought to have been revised periodically. If it is not so done, despite directions by the Courts, the compensation can be worked upon by taking enhanced notional income of the deceased, keeping in view the increased cost of living.

In this context, a reference may be made to the Constitutional Bench judgment reported as *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009* . While substantially endorsing the view expressed in *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the Constitutional Bench provided for enhanced amounts, on account of 'loss of estate', 'loss of consortium' and 'funeral expenses'. The judgment also provided that

amounts indicated, on account of these three heads, should be revised, at the rate of 10% every three years.

On a parity of reasoning, the amount indicated in Schedule-II to the Act in 1994, minimum at the rate of 10%, every three years, till the year 2001, ought to have been enhanced, twice to the extent of 10% each. Considering the avocation, so followed by deceased Purinder Kumar Chopra and he being an income tax payee, while considering, there to be no deviation, vis-a-vis, earnings of the deceased, so as to take the case outside the purview of Section 163A of the *ibid* Act, in modest estimate, the earnings of the deceased, can conveniently be taken to be Rs.3,300/- per month. Taking it to be so, his annual earnings comes to be Rs.39,600/-.

This amount is taken as base amount for the year 1994 and after period of three years, taking the enhancement to be **10%**, it works upon as Rs.43,560/-. In the similar manner, in the year 2000, it works upon as Rs.47,916/-. The accident had taken place on 27.11.2001. Thus, the annual earnings are taken as Rs.47,916/-. Thus, periodical increase on some weightage basis has been applied, to the minimum amount of enhancement of 10%, as has been done in *Pranay Sethi's case(supra)*.

Thus, the notional income of the deceased, at the time of his death on **27.11.2001** i.e. the day of accident, is taken to be **Rs.47,916/-** per annum. Upon the notional income being increased, the quantum of compensation, has to be worked upon. Considering the notional income as **Rs.47,916/-**, deduction to the extent of 1/3rd i.e. **Rs.15,972/-** is to be made,

on the count of personal expenses and the residue amount comes to be **Rs.31,944/-**.

Even, the multiplier of '8' applied by learned Tribunal is also not appropriate. As per *Sarla Verma's case (supra)*, considering the age of the deceased, which is worked upon, by taking his date of birth to be 22.06.1946, to be less than **35 years**, at the relevant time, '11' is the appropriate multiplier. By applying this multiplier, the loss of dependency comes to be **Rs.31944x11=Rs.3,51,384/-**.

On the count of '**loss of consortium**', the appellant-claimant No.1 (widow) is entitled to the compensation, to the extent of **Rs.44,000/-** and further **Rs.16,500/-** is granted as '**funeral expenses**'.

Therefore, the total compensation, as now worked upon, comes to be **Rs.3,51,384+44000+16500=Rs.4,11,884/-..**

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.411884-202000=Rs.2,09,884/-**.

The amount of compensation already granted vide impugned Award shall be apportioned, as ordered by learned Tribunal. However, out of the enhanced compensation, so now awarded, a sum of **Rs.1,50,000/-** shall be paid to appellant-claimant No.1-Mrs.Ramni Chopra and a sum of **Rs.59,884/-**, shall be paid to appellant-claimant No.2-Mr.Himanshu Chopra. Keeping in view the interest rates, having reduced drastically, on the enhanced amount of the compensation i.e. **Rs.2,09,884/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from

the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Accordingly, the impugned Award dated 26.04.2004 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award shall remain the same.

With the above observations, the present appeal stands allowed.

May 12, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No