IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2818 of 2006 (O&M)
Decided on:13.10.2023

Ram Parkash Jindal ... Appellant

Versus

Nirmal Kumar and others ... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sachin Gupta, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr. R.C. Kapoor, Advocate
for respondent No.3.

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<u>HARPREET SINGH BRAR, J. (ORAL)</u>

<u>C.M. No.8994-CII of 2023</u>

The present application has been filed for fixing the main appeal for actual date of hearing.

For the reasons stated in the application, the same is allowed and with the consent of parties, the main appeal is taken up for hearing today itself.

<u>FAO No.2818 of 2006</u>

1. The present appeal has been preferred by the appellant-claimant for enhancement of compensation of ₹1,15,000/- awarded by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as the Tribunal) vide award dated 16.02.2006 on account of death of his son namely Yogesh Kumar Jindal in a motor vehicular accident.

2. In brief, the facts are that on 23.06.2003, Yogesh Kumar Jindal along with Navdeep Kumar alias Kaku, Sonu Jindal and Smt. Anita Rani was travelling in Maruti Van No.HR-05M-0038, which was being driven by respondent No.1-Nirmal Kumar in a rash and negligent manner, despite the fact that all the occupants of the aforesaid vehicle had requested him to slow down the speed of the vehicle, as it was raining and the visibility was poor. At about 8.30 A.M. when they reached near the petrol pump situated in the area of village Hamidpur, Tehsil and District Ambala on Ambala-Jagadhari Road, the driver lost control over the offending vehicle, as a result of which, it fell in a ditch and turned turtle after hitting against some trees. As a result of the same, Yogesh Kumar Jindal and Navdeep Kumar alias Kaku died whereas Sonu Jindal and Smt. Asha Rani suffered injuries.

3. The learned Tribunal while assessing the compensation on account of death of Yogesh Kumar Jindal, who was 19 years of age at the time of accident and was a student of B.A. final year, took the notional income of deceased as ₹15,000/- per annum as per second Schedule attached to Section 163-A of the Motor Vehicle Act, 1988 (hereinafter referred to as the 1988 Act) and made a deduction of 1/3rd for personal expenses. It had applied a multiplier of 11 to assess the loss of dependency at ₹1,10,000/-. An amount of ₹5000/- was provided for last rites and thus, a total compensation of ₹1,15,000/- was awarded. Dissatisfied with the quantum of compensation, the appellant-claimant has approached this Court by way of present appeal for enhancement of the same.

4. Learned counsel appearing for the appellant-claimant submits that the learned Tribunal has gravely erred in taking the notional income of the deceased, who was a student of B.A. final year, as ₹15000/- per annum while applying the second Schedule attached to Section 163-A of the 1988 Act. Further, the

deceased was 19 years of age at the time of accident and therefore, a multiplier of 18 was to be applied instead of 11. It is also argued that no compensation was provided in view of future prospects and the amount of ₹5000/- provided under the conventional heads is also meager and liable to be enhanced. In support of his arguments, he relies upon the judgment rendered by the Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680*** and the judgment passed by this Court in FAO No.2579 of 2006 decided on 02.09.2015 titled as ***Pawan Kumar and another Vs. Nirmal Kumar and others.***

5. Per contra, learned counsel appearing for respondent No.3-Insurance Company supported the award passed by the learned Tribunal by contending that in the absence of any income proof, the learned Tribunal has rightly resorted to the second Schedule of Section 163-A of the 1988 Act while taking the notional income of the deceased as ₹15000/- per annum. It is further contended that since the income of the deceased was determined notionally, the learned Tribunal has rightly not granted any amount for the future prospects. All other heads were also assessed correctly by the learned Tribunal and thus, there is no scope for enhancement.

6. I have heard learned counsel for the parties and perused the paper book with their able assistance.

7. The facts of the case are not in dispute. The deceased was 19 years of age at the time of accident and was a student of B.A. final year. In the opinion of this Court, the learned Tribunal has gravely erred in applying the second Schedule of Section 163-A of the 1988 Act while assessing the notional income of the deceased as ₹15,000/- per annum in the absence of any income proof. The claim petition was filed under Section 166 of the 1988 Act and therefore, the learned

Tribunal ought to have assessed the notional income of the deceased keeping in view the facts and circumstances of the case, especially keeping in mind the fact that the deceased was a student of B.A. final year. There cannot be a straightjacket formula to determine the income of a student in the absence of any income proof and therefore, while determining the notional income of a student, the academic as well as non-academic activities of the student need to be examined.

8. The Hon'ble Supreme Court in ***V. Mekala Vs. M. Malathi and another (2014) 11 SCC 178*** has considered the notional income of a student studying in 11th standard, who was injured in a road accident that took place in the year 2005 as ₹10,000/- per month. In the said case, the Hon'ble Supreme Court while taking the notional income of the injured as ₹10,000/- per month had considered the fact that the injured was a brilliant student as she had secured first rank in the 10th standard and was likely to have a better future in terms of educational career by acquiring a basic or master's degree in professional courses which could have gotten her a suitable public or private employment but on account of the permanent disablement she suffered due to injuries sustained by her in the accident, that opportunity is lost to her.

9. A two Judge Bench of the Hon'ble Supreme Court in ***Arvind Kumar Mishra v. New India Assurance Co. Ltd. (2010) 10 SCC 254***, speaking through Justice R.M. Lodha, has held as under:-

> *"14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like BIT, it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs.3,50,000 per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have*

been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000 per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs. 60,000 per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis. Since he suffered 70% permanent disability, the future earnings may be discounted by 30% and, accordingly, we estimate upon the facts that the multiplicand should be Rs.42,000 per annum."

A two Judge Bench of the Hon'ble Supreme Court in ***Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma and another (2015) 2 SCC 180*** speaking through Justice V. Gopala Gowda J., while assessing the compensation in the case of a 19 years old medical student, who was pursuing his MBBS course but lost his life in a motor vehicular accident, has held as under:-

"11. The deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs 25,000 p.m. i.e. Rs 3,00,000 p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. v. Deo Patodi [(2009) 13 SCC 123 : (2009) 5 SCC (Civ) 29 : (2010) 1 SCC (Cri) 963] and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , we arrive at a total

> *loss of dependency at Rs 26,00,000 [(Rs 3,00,000 minus 1/3 × Rs 3,00,000) × 13].”*

10. In the present case, the deceased was a student of B.A. final year but no material is made available on record to establish that the deceased was a brilliant student and he was studying in a prestigious institute. Furthermore, there is no evidence on record to establish the income of the deceased. Therefore, keeping in view the fact that the deceased was a student of B.A. final year, which is not a professional degree and the fact that the accident occurred in the year 2003, this Court determines the notional income of the deceased as ₹4500/- per month and makes a deduction of one half towards personal expenses. Further, the component of future prospects to the tune of 40% will also be applicable on the said notional income as has been provided by the Hon’ble Supreme Court in ***Pranay Sethi (supra)***. The Hon’ble Supreme Court in ***Hem Raj Vs. Oriental Insurance Co. Ltd. (2018) 15 SCC 654*** has observed as under:-

> “*7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made. The Tribunal made addition of 50% while the High Court has deleted the same.”*

11. The deceased was 19 years of age and therefore, this Court adopts a multiplier of 18. Accordingly, the compensation is re-assessed as under:-

Sr. No.	Heads	Calculation (₹)
1.	Income	4500 per month
2.	Future prospects @ 40%	4500+1800=6300
3.	Deduction @ 50%	6300x50%=3150
4.	Multiplier	18
5.	Loss of dependency	3150x12x18=6,80,400
6.	Loss of consortium	48,000

7.	Loss of estate	18,000
8.	Funeral Expenses	18,000
9.	**Total Compensation**	**7,64,400**
10.	Enhanced amount of compensation	7,64,400-1,15,000=**6,49,400**

12. The enhanced amount of compensation of ₹6,49,400/- in addition to the amount of ₹1,15,000/- as awarded by the learned Tribunal, shall be paid to the appellant by the insurer-respondent No.3 within a period of two months from the date of receipt of certified copy of this order along with interest @7.5% from the date of filing of the claim petition till its realization. In case the enhanced amount of compensation is not paid within the period as stipulated above, the same shall carry interest @9% per annum.

13. Resultantly, the award passed by the learned Tribunal is modified to the above extent and the appeal is allowed.

14. Application pending, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

October 13, 2023
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No