114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4888-2019 (O&M) and
X-OBJC No.3-2021
Date of Decision: 30.01.2023

Reliance General Insurance Company Ltd. ...Appellants

Versus

Dheeraj Kumar Handa and others ....Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. Sunil Kumar, Advocate for the appellant.

Mr. Jagdish Manchanda, Advocate and
Mr. NischalChetanya Manchanda, Advocate for respondent Nos.1 to 4/cross-objectors.

Mr. H.S. Jugait, Advocate for respondent Nos.5 and 6.

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B.S.Walia, J (Oral).

1. This order shall decide appeal filed by the Insurance Company as well as cross-objections filed by the respondent-claimants. Challenge in the appeal by the Insurance Company is to assessment of the income of the deceased by the Tribunal as also to the rate at which deduction has been made towards personal expenses of the deceased while challenge in the cross-objections is to the non-award of spousal and parental consortium to the husband and children of the deceased.

2. Learned counsel contends that income tax returns relied upon by the respondent-claimants pertain to the year 2014-2015 and 2015 -2016 reflecting income of the deceased as Rs.1,90,000/- and Rs.2,46,500/- respectively. Learned counsel contends that there is no ITR for the period prior thereto or for the subsequent period, although the date of death of deceased was 16.12.2016. Learned counsel contends that in the

circumstances, the income of the deceased ought to have been taken as admissible in the case of a skilled worker as per the notification under the Minimum Wages Act, 1948 i.e. Rs.9520/- during the relevant period and further that since the respondent-claimants were husband and three major children of the deceased, deduction of income of the deceased towards her personal expenses @ 1/4th of her income was also legally unsustainable and the deduction should have been @ 50%.

3. Per contra, learned counsel for the respondents/cross-objectors, on the other hand, relied upon a decision of Hon'ble the Supreme Court in Malarvizhi&Ors. Versus United India Insurance Company Limited &Anr. Civil Appeal No.9196-97 of 2019 (SLP (C) Nos. 9630-31 of 2019), decided on 09.12.2019, wherein as against the income tax returns filed by the deceased therein for the financial year 1995-1996 to 2000-2001, the income declared for the financial year 1997-1998, being the highest, was taken as the annual income of the deceased by the High Court. Hon'ble the Supreme Court on an appeal by the claimants was pleased to observe as under:-

> *"We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased."*

4. As per the aforementioned decision, income tax return reflecting the highest income was taken into account for computing the compensation payable while ignoring the other income tax returns, which

reflected reduction in the annual income of the deceased.

5. Learned counsel contends that as per the decision of Hon'ble the Supreme Court in Malarvizhi's case (supra), Income Tax Return is a statutory document and reliance on which is to be placed for determining the annual income of the deceased. Learned counsel also relies upon the decision of Hon'ble the Supreme Court in Smt. Anjali & others versus Lokendra Rathod and others, 2023 (1) RCR (Civil) 229 to contend that Hon'ble the Supreme Court in said case while relying upon the decision in Malarvizhi&Ors. (supra) held that determination must proceed on the basis of the Income Tax Return, where available, since the same is a statutory document. Relevant extract of the aforementioned decision in Smt. Anjali's case (supra) is reproduced as under:

> 6. The deceased was aged 28 years at the time of the accident, and he used to run a business of scrap and earned Rs. 15,000/- per month as claimed by the appellants, in support the appellants had filed the deceased's Income Tax Return for financial year 2009-2010 before the Tribunal which showed the total income of deceased to be Rs.1,18,261/-, approx. Rs.9855/- per month. The MACT disregarded the deceased's Income Tax Return on the ground that neither any ITR prior to 2009-2010 nor any other document with regard to the deceased's income was filed before the Tribunal. The MACT while relying on this Court's judgment in Laxmi Devi &Ors. Vs. Mohammad Tabbar& Anr.1, held the deceased to be a skilled labour and fixed his income at Rs.4000/- per month i.e., Rs.48,000/- per annum. The Tribunal applied a multiplier of '17' and deducted one-fourth (1/4th) of the income towards his personal 1 (2008) 12 SCC 165, expenses for the purpose of calculation of the compensation under the head of loss of dependency. A total sum of Rs.6,12,000/- was awarded towards loss of dependency, to this Rs.10,000/- was added for loss of pain & suffering and Rs.2,000/- for funeral expenses. The MACT awarded a total sum of Rs.6,24,000/- (Rupees Six Lakh

Twenty-Four Thousand only) towards compensation with interest @ 6% per annum from the date of the Claim Petition till date of realization.

9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009- 2010) of the deceased, which reflects the deceased's annual income to be Rs.1,18,261/-, approx. Rs.9,855/- per month. This Court in Malarvizhi&Ors. (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (Supra), this Court has laid as under:

"10. …We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased." 2 (2020) 4 SCC 228.

Hence, this Court is of the opinion that the deceased's annual income be fixed at Rs.1,18,261/-, approx. Rs.9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010.

10. The provisions of the Motor Vehicles Act, 1988 (for short, "MV Act") gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the applicant/s. In Sarla Verma &Ors. Vs. Delhi Transport Corporation & Anr.3, this Court has laid down as under:

"16. ..."Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make

> good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.” 3 (2009) 6 SCC 121
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> 11. In Sarla Verma (Supra), it was further held that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third (1/3rd) where the number of dependent family members is between 2 and 3, one-fourth (1/4th) where the number of dependent family members is between 4 and 6, and one- fifth (1/5th) where the number of dependent family members exceeds six. The same has been affirmed by the Constitution Bench of this Court in National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.4

6. Learned counsel for the respondents further contends that no doubt the children of the deceased were major but the eldest was 23 years unmarried daughter while the second unmarried daughter was 21 years of age and the third child i.e. son was also unmarried aged 19 years andall childrenwere students, therefore, dependent upon the deceased. Learned counsel for the appellant despite query, has not been able to refer to any evidence to the contrary.

7. Accordingly, in view of the position noted above, I am of the considered view that the submission of learned counsel for the appellant that income of the deceased ought to have been taken as Rs.9500/- per month as per the then rates prevailing for a skilled worker as per the notification under the Minimum Wages Act, notwithstanding income tax return for the period 2015-2016 having been filed on 01.07.2015 much prior to the death of the deceased on 16.12.2016, for the simple reason that the income tax return is a statutory document as has been held in the case of Malarvizhi’s case (supra) and Anjali’s case (supra). Secondly, learned counsel for the

appellant despite query has not been able to show any evidence to the effect that the respondents/claimants were not dependent upon the deceased so that the deduction towards personal living expenses of the deceased should be other than @ $1/4^{th}$ in view of the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009 and Sarla Verma vs. Delhi Transport Corporation 2009 (3) (Civil) 77 (SC), wherein it was held that where a deceased was married, the deduction towards personal and living expenses would be @ $1/4^{th}$ in case of 4 to 6 dependents family members. In the instant case, the number of family members dependent upon the deceased were 'four', therefore, the deduction was rightly made @ $1/4^{th}$ of the income of the deceased towards her personal expenses.

8. Accordingly, finding no merit in the plea on behalf of the appellant as also in view of the decision relied upon, by the learned counsel for the respondents/cross-objectors, the instant appeal is dismissed while the cross-objections are allowed to the extent that respondents/cross-objectors i.e. children are held entitled to spousal / parental consortium respectively @ Rs.44,000/- each in view of the decision of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram, 2018 (4) RCR (Civil) 333 and United India Insurance Company Ltd. Vs. Satinder Kaur alias Satwinder Kaur and others, 2021 (11) SCC 80. As regards, respondent/cross-objector (husband), he has already been awarded Rs.40,000/- towards spousal consortium, therefore, he is held entitled to Rs.4,000/- consortium over and above amount already granted by the Tribunal while the remaining 03 respondents/cross-objectors would be entitled to Rs.1,32,000/- on account of loss of parental consortium along with interest @ 7.5% per annum.

9. In view of the position noted above, the appeal being bereft of any merit is dismissed while the cross-objections are allowed to the extent as noted above.

(B.S.Walia)
Judge

30.01.2023
PS/Rajesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No