IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2388 of 2012(O&M)
Date of Decision:02.06.2023

Nirmala and others .... **Appellants**

Versus

Ramphool and others ...... **Respondents**

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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Present: Mr.Akshit Pathania, Advocate, Legal Aid Counsel for the appellants.

Mr.Rajneesh Malhotra, Advocate and
Ms.Yagyashree Singh, Advocate
for respondent No.3-Insurance Company.

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HARPREET SINGH BRAR, J.(ORAL)

CM-10547-CII-2012

For the reasons recorded in the application, delay of 162 days in refiling the accompanying appeal is condoned.

Application stands disposed of.

CM-105456-CII-2012

For the reasons recorded in the application, delay of 49 days in filing the accompanying appeal is condoned.

Application stands disposed of.

MAIN APPEAL

1. The present appeal has been filed by the appellant/claimants for enhancement of compensation awarded to them by the Motor Accident Claims Tribunal, Sonepat (hereinafter referred to as 'the Tribunal' for short) vide award dated 05.04.2011, in a claim petition filed under Section 166 of

the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for short) on account of the death of Sunil, son of claimant No.1 and brother of claimants of 2 to 5 in a motor vehicular accident.

FACTUAL BACKGROUND

2. Briefly, the facts of the case are that on 09.07.2010, around 6.00 p.m. Sunil (since deceased) was travelling on his motor cycle for going to Rohtak. When he reached near village Brahmanwas on Gohana-Rohtak road, within the area of Police Station Sadar, Rohtak, a tractor bearing registration No. HR11D-0423 being driven by respondent No.1 rashly and negligently, came from Rohtak side and hit the motor cycle of the deceased. After the accident respondent No.1 fled from the spot leaving his tractor there. Deceased Sunil was taken to PGIMS, Rohtak but he succumbed to the injuries sustained in the accident. An FIR No. 267 dated 10.07.2010, under Sections 279, 304A IPC was registered at Police Station Sadar, Rohtak.

3. The deceased was 22 years of age at the time of death and was a labourer earning Rs. 4500/- per month. He was the sole bread winner of the family and the appellants included his widowed mother and minor siblings. They all were fully dependent on the deceased.

4. The learned Tribunal held that the accident had occurred due to the rash and negligent driving of respondent No.1. While awarding compensation, the Tribunal assessed the income of deceased as Rs. 3000/- per month and deducted 50% of the amount towards his personal expenses. The Tribunal applied a multiplier of '13' taking into account the age of the mother of the deceased and thus, awarded a compensation to the tune of Rs. 2,44,000/- along with 7.5% p.a. interest from the date of filing of the claim petition till realisation. An amount of Rs. 10,000/- was also awarded

on account of the funeral expenses. The respondent no.3- Insurance Company was held liable to pay the entire compensation.

CONTENTIONS

5. Learned counsel for the appellants has assailed the award on the following grounds:-

i) That the learned Tribunal has not granted any compensation under the head of 'future prospects' and under conventional heads.

ii) That the income of the deceased was assessed as Rs. 3000/- per month by the learned Tribunal which is much less than the income fixed by the Government of Haryana in its Notification issued for fixing the notional income of an unskilled worker for the year 2010. According to the Notification the minimum wage fixed for the unskilled labourer/worker for the year 2010 was Rs. 4348/- per month.

iii) That the learned Tribunal has wrongly applied the multiplier of '13' keeping in view the age of the mother of the deceased, whereas the age of the deceased should have been taken into consideration. Therefore, keeping in view the parameters laid down by the Hon'ble Supreme Court in **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another**, **2009(6) SCC 121,** a multiplier of '18' should have been applied keeping in view the age of the deceased as 22 years.

iv) That future prospects have also not been granted by the Tribunal as laid down in **National Insurance Company vs. Pranay Sethi, (2017) 16 SCC 680.** As per counsel future prospects to the tune of 40% should have been awarded.

v) That the learned Tribunal has erred in deducting 50% of the income of the deceased towards his personal expenses. Keeping in view the fact that the deceased was the sole bread earner of the family since his father had predeceased him leaving behind a widow and four minor children, deduction of

25% would have been appropriate.

vi) That nothing has been awarded under the non-pecuniary heads except funeral expenses.

6. Learned counsel for respondent No.3-Insurance Company was not able to controvert the factual position and the settled law. However, he emphasised that the deduction of 50% was rightly done by the learned Tribunal.

ANALYSIS AND OBSERVATION

7. Undisputedly, the notional income fixed by the Government of Haryana vide Notification issued for the year 2010 with regard to an unskilled labourer was Rs. 4348/- per month and the learned Tribunal has assessed the monthly income of the deceased as Rs. 3000/- per month which is on the lower side and the same is required to be enhanced. Accordingly, the monthly income of deceased is taken as Rs. 4348/- per month which is rounded off to Rs. 4500/- per month.

8. Keeping in view the ratio laid down in **Pranay Sethi (supra)**, the future prospects are awarded to the extent of 40%. With regard to the deductions towards personal expenses, a three Judge Bench of the Hon'ble Supreme Court in **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another**, **2009(6) SCC 121,** speaking through Justice R.V. Raveendran, held as follows:-

> *"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 dependant 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 they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, 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 dependant 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."

The facts of the present case are similar to that of the afore-mentioned decision. The deceased was the sole bread winner of the family having a widowed mother and four minor siblings. In the light of law laid down in the above mentioned decision, this Court is of the considered view that the deduction of 50% towards personal expenses of the deceased is on the higher side and the same is reduced to 25%.

9. Similarly the multiplier of '13' as applied by the learned Tribunal is in contravention of the ratio of law laid down in the above mentioned judgment. Keeping in view the age of the deceased to be 22 years, the multiplier of '18' would be appropriate.

10. Further, learned Tribunal has not awarded anything under the heads of loss of estate and loss of consortium. This Court grants loss of

estate to the tune of Rs. 15,000/- and loss of consortium to the tune of Rs. 40,000/- to each of the claimant. This Court also increases the amount awarded under the head funeral expenses from Rs. 10,000/- to Rs. 15,000/-. According to the law laid down in **Pranay Sethi (supra)**, the aforesaid amounts should be enhanced at the rate of 10% after every three years. Nothing had been awarded towards litigation expenses. This Court also grants Rs. 25,000/- towards litigation expenses.

CONCLUSION

11. Accordingly the compensation awarded to the claimant/appellants is redetermined as follows:-

Sr.No.	**Compensation**	**Amount**
A. PECUNIARY		
1.	Income	Rs. 4500/- per month
2.	Annual Income	Rs. 4500 x 12= Rs. 54,000/-
3.	Future prospects (40%)	Rs. 54,000 x 40/100= Rs.21,600/-
4.	Loss of future earnings	Rs. 21,600/- + Rs. 54,000/-= Rs.75,600/-
5.	Deduction (25%)	Rs.75,600 x 25/100= Rs. 18,900/- Rs.75,600-Rs.18,900= Rs.56,700/-
6.	Multiplier (18)	Rs. 56,700/- x 18 = Rs. 10,20,600/-
TOTAL COLUMN A		**Rs.10, 20, 600/-**
B. NON PECUNIARY		
1.	Loss of Estate	Rs. 16,500/-
2.	Funeral expenses	Rs. 16,500/-
3.	Loss of consortium	Rs.44,000/- x 5 = Rs. 2,20,000/-
4.	Litigation expenses	Rs. 25,000/-
TOTAL COLUMN B		**Rs. 2,78,000/-**
TOTAL AMOUNT OF COMPENSATION (A + B)		**Rs.10,20,600/- + Rs. 2,78,000/- = Rs. 12,98,600/-**

12. The appellants are entitled to interest at the rate of 7.5% p.a. on the amount of enhanced compensation, as awarded above, from the date of filing of the claim petition till the date of actual payment. It is made clear that amount already paid would be deducted from claim determined hereinabove. The respondent No.3-insurance company is directed to make the payment of compensation within a period of two months from the date of passing of this order.

13. Appeal is allowed in the aforesaid terms.

14. Pending application(s), if any, shall also stand disposed of.

15. Registry is directed to send a copy of this order to learned Motor Accident Claims Tribunal, Sonepat/Executing Court for compliance of the same.

(HARPREET SINGH BRAR)
JUDGE

02.06.2023
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Whether speaking/non speaking : Yes/No
Whether reportable/non reportable : Yes/No