

2023:PHHC:115336

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4620-2014 (O&M) and
Date of Decision: September 02, 2023

New India Assurance Company Ltd.

...Appellant

VERSUS

Dinesh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.R.C.Kapoor, Advocate
for the appellant.

Mr.Arun Abrol, Advocate
for respondents No.1 to 3.

Respondent No.4-ex parte.

None for respondent No.5.

ARCHANA PURI, J.

The present appeal has been filed by the Insurance Company, thereby, assailing the Award dated 10.04.2014 vide which, compensation was granted to the respondents-claimants, on account of death of Satinder Kumar alias Bittu, in a motor vehicular accident, which took place on 30.04.2012.

On appraisal of the evidence brought on record, learned Tribunal vide impugned Award had granted compensation to the extent of Rs.19,97,200/- to the respondents-claimants.

Feeling aggrieved by the extent of compensation, so granted,

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the Insurance Company has filed the present appeal, thereby, questioning the quantum of compensation, so granted to the respondents-claimants.

So far as the fact of accident and manner of taking place of the same, as well as the liability, so fastened upon the driver, owner and insurer of the offending vehicle, to be joint and several are concerned, it is pertinent to mention that no appeal, as such, has been filed by the aforesaid persons, to dispute the liability, so fastened upon them and thus, qua these issues, the findings, so recorded by learned Tribunal have attained finality. It is now only the dispute, vis-a-vis, quantum of compensation.

The specific pleaded case of the respondents-claimants is that deceased Satinder Kumar alias Bittu was 45 years old and he was shopkeeper and earning Rs.25,000/- per month. However, learned counsel for the Insurance Company has submitted that even though, the respondents-claimants had asserted about the deceased to be a shopkeeper, but no satisfactory evidence, relating to the same, as such, has come on record. No detail, of what kind of shop was being run by the deceased, has been proved. In the given circumstances, it is submitted that the earnings ought to be taken as a casual labourer and precisely, on this account, while assessing the income of the deceased as Rs.12,000/- and working upon, the compensation needs to be scaled down.

However, the aforesaid submission is bereft of merits. Firstly, it is pertinent to mention that the Motor Vehicle Act is a benevolent piece of legislation and it does not require strict rules of evidence. Keeping in view the same, it is essential to mention that claimant No.1-Dinesh, who is widow of the deceased, herself has stepped into witness box as PW-2 and she has

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categorically deposed about deceased (her husband) to be earning Rs.25,000/- per month from the shop, which he was running. No cross-examination, as such, has been conducted by the Insurance Company, vis-a-vis, the deceased, running a shop. Even though, it has come in the cross-examination of PW-2 Dinesh, that she had expressed her inability to produce any document regarding Rs.25,000/- as monthly income of her husband, but however, his indulgence in the shop-keeping, as such, has never been disputed in the cross-examination.

Similarly, PW-1 Mangat Rai, who is an eye witness to the accident, in his affidavit, has also stated about deceased to be earning Rs.25,000/- per month, from the shop, he was running and qua this witness also, no cross-examination, as such, has been conducted to dispute running of the shop by the deceased, even though, the extent of earnings, as such, has been disputed by way of giving a suggestion, which has been though denied.

In such circumstances, as now submitted by learned counsel for the appellant, the deceased, as such, cannot be, in the minimum, considered as casual labourer. However, the assertion of the extent of his earnings to be Rs.25,000/- per month, does not stand established, but the fact of running a shop, has not been disputed, by way of cross-examination.

In the light of the same, learned Tribunal had appropriately not considered the deceased as casual labourer and in the modest estimate, had taken the earnings of the deceased as Rs.12,000/- per month. The guess work, so done by learned Tribunal is appropriate, which calls for no interference, so far as, extent of earnings of the deceased is concerned.

Taking into consideration, the same extent of earnings, it is

essential to note that in the tabular form, learned Tribunal had worked upon the compensation, so granted, which is herein reproduced:-

Date of accident	30.04.2012	
Age of the deceased	45 years	
Claimants:	Dinesh widow, Kitty daughter and Manu minor son	
	Heads of claim	Tribunal
Sr. No.		Amount (Rs.)
1.	Income (annual)	1,44,000/-
2.	Add 30% increase	43,200/-=1,87,200/-
3.	Deduction 1/3	62,400 = 1,24,800/-
4.	Multiplicand (annualized)	45 years
5.	Multiplier	14
6.	Loss of dependence	17,47,200/-
7.	Loss of consortium	1,00,000/-
8.	Loss of care and guidance to minor child	1,00,000/-
9.	Loss of estate	25,000/-
10.	Funeral expenses	25,000/-
	Total	19,97,200/-

However, aforesaid detail calls for re-computation, as compensation had been granted under various heads, where it ought not to have been granted and in some of the heads, it has been granted more than, what was required to be granted.

From the evidence on record, it stands established that the date of birth of the deceased was 20.08.1967. The accident had taken place on

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30.04.2004. So working upon, at the relevant time, the deceased was 45 years old.

While taking the earnings of the deceased as Rs.12,000/- per month, the annual earnings is worked upon as Rs.1,44,000/-. Considering the number of dependents to be three, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the deduction of 1/3rd is to be made towards personal expenses and thus, the residue earnings comes to be Rs.1,44,000-48,000(1/3rd)=Rs.96,000/-

However, keeping in view the age of the deceased and nature of avocation, so followed, as already observed aforesaid, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, an addition of 25% has to be made in the earnings, on the count of future prospects. As such, the annual earnings of the deceased comes to be Rs.96,000+24,000(25%)=Rs.1,20,000/-.

As per *Sarla Verma's case (supra)*, considering the age of the deceased, '14' is the suitable multiplier to be applied. Thus, by applying the same, the loss of dependency comes to be Rs.1,20,000x14=Rs.16,80,000/-.

Besides the aforesaid, amounts are to be paid under conventional heads, namely, loss of consortium, loss of estate and funeral expenses.

In this regard, reference is made to decision rendered in *Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327*, wherein, the Hon'ble Supreme Court, while relying upon *Magma's case (supra)*, had concluded about the children and mother of the deceased, all to be entitled to Rs.40,000/- each towards filial and parental

consortium. Also, reference is made to *Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85*, wherein also, the Hon’ble Supreme Court had held the claimants of that case, each to be entitled to compensation, on the count of ‘spousal consortium’ for wife and ‘parental consortium’ for two children.

In consonance with the observations made in *Pranay Sethi's case (supra)*, after making addition of 10%, after three years from the date of passing of the judgment, the amount payable, on the count of ‘loss of consortium’ is to extent of **Rs.44,000/-** to each of the claimant (Rs.44,000x3=Rs.1,32,000/-). Besides the same, the claimants are also entitled to compensation for the ‘loss of estate’ as well as ‘funeral expenses’, to the extent of **Rs.16,500/-**, on each count..

Considering the same, the compensation payable to claimants, on account of death of Satinder Kumar alias Bittu, is re-appraised, as herein given:-

Loss of dependency	:	Rs.16,80,000/-
Loss of consortium	:	Rs.1,32,000/-
Loss of estate	:	Rs.16,500/-
Funeral expenses	:	Rs.16,500/-
Total	:	Rs.18,45,000/-

In the light of aforesaid work upon, the compensation, so awarded by learned Tribunal, is scaled down from **Rs.19,97,200/-** to **Rs.18,45,000/-**.

The impugned Award dated 10.04.2014 stands modified, to the extent, as indicated aforesaid and the remaining terms of liability, as well as disbursal of the compensation amount, besides the interest component, shall

remain the same.

With the above observations, the present appeal stands allowed.

September 02, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No