

226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2286-2016(O&M)
Date of Decision :01.05.2023

Sant Kaur ...Appellant

Versus

Manjit Singh and othersRespondents

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

Present : Mr. Dheeraj Narula, Advocate for the appellant.

Mr. Sachin Gupta, Advocate for
Mr. SachinOhri, Advocate for respondent no.3.

B.S. Walia, J. (Oral)

1. Prayer in the appeal is for modification of award dated 28.05.2015, passed by the learned Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as "the Tribunal") and for enhancement of compensation of Rs.6,95,200/- awarded to the widowed mother of the deceased, Jagtar Singh.

2. Learned counsel contends that the deceased was 41 years of age and was working as a truck driver and died in a motor vehicular accident on 18.10.2013, leaving behind his widowed mother i.e. the appellant and that the Tribunal by taking into account the income of the deceased @ Rs.6,000/- per month, by making deduction @ 50% of the established income of the deceased towards his personal expenses, by adding 30% of the income of the deceased towards future prospectus, besides by awarding Rs.25,000/- on account of loss of love and affection and Rs.15,000/- on account of funeral expenses, awarded total

compensation of Rs.6,95,200/-.

3. Learned counsel contends that the income of the deceased was grossly under assessed and should have been assessed at a minimum of Rs.15,000/- per month besides the appellant was entitled to Rs.44,000/- on account of loss of filial consortium and Rs.16,500/- on account of loss of estate. Learned counsel relies upon the decision of this Court in Madhu Rani and others vs. Vishesh and others FAO No.6412-2012, decided on 08.08.2018, FAO No.1615-2013, in case titled as Batheri Devi and others vs. VidyadharNoparamJat and another, as also the decision of Hon'ble the Delhi High Court in Mahrunish and others vs. Mohd. Naseem Haider and others 2013 ACJ 2273.

4. Learned counsel for the respondent/Insurance Company on the other hand while not disputing the claim of the appellant for award of filial consortium, Rs.16,500/- on account of loss of estate, contends that Rs.25,000/- awarded by the Tribunal on account of loss of love and affection is not admissible in view of the decision of Hon'ble the Supreme Court and further that the income of the deceased as truck driver @ Rs.6,000/- per month has been correctly assessed. He further contends that in view of the deceased being 41 years of age and self-employed, only 25% of the established income of the deceased was liable to be added towards future prospects and not 30 %, in view of the decision of Hon'ble the Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others 2017 (4) RCR (Civil) 1009.**

5. I have considered the submissions of learned counsel.

6. Admittedly, the deceased was 41 years of age at the time of his death and left behind his widowed mother i.e. appellant herein. The

fact that the deceased was a driver of a truck has not been disputed nor has date of accident and death i.e. 18.10.2013, been disputed. The only point in issue is whether the income of the deceased was correctly assessed by the Tribunal or not, in view of the claim in the petition of the deceased earning Rs.12,000/- per month. In respect of a motor vehicular accident which took place in the case of a truck driver on 24.03.2011, income of the deceased truck driver in Madhu Rani's case (supra), was assessed at Rs.8500/- per month as against the assessment by the Tribunal @ Rs.6,000/- per month. Relevant extract of the decision in Madhu Rani's case (supra) is reproduced as under:-

“4. I have considered the submissions of learned counsel for the parties. Admittedly, the deceased was a truck driver and died in a motor vehicular accident on 24.03.2011. The income assessed by the Tribunal for the deceased, a truck driver at Rs.6,000/- in the year 2011 is on the lower side. In Mintu Rout and another vs. Satya Pradymna Mohapatra and others 2014 (1) SCC 384 as against the assessment by the Motor Accidents Claims Tribunal of income of Rs.3,000/- of a car driver, who died in an accident on 08.11.2004, Hon'ble the Supreme Court assessed the income of the deceased car driver in the said case at Rs.6,000/- per month. In Bajaj Allianz General Insurance Company Ltd. vs. Prem Kumar and others 2014 (3) PLR 860, a Co-ordinate Bench of this Court as against the claim of Rs.7,000/- assessed the income of a TATA 407 driver, who had died in a motor vehicular accident in the year 2008, at Rs.6500/- per month. Hon'ble the Delhi High Court in Mahrinish and others vs. Mohd. Naseem Haider and others 2013 ACJ 2273, assessed the income of a truck driver, who died in an accident on 24.09.2009 at Rs.7,000/-. Likewise, this Court in FAO No.1615 of 2013, in case titled as Bhateri Devi and others vs. VidyadharNoparamJat and another, assessed the income

of a truck driver who died in an accident in the year 2010 at the rate of Rs.8,000/- per month. Relevant extracts of the decision of Hon'ble the Supreme Court, this Court as well as Hon'ble the Delhi High are reproduced as under:-

Relevant extract of the decision in Mintu Rout's case (supra):

"Therefore, it is urged by the learned counsel that the Tribunal has committed an error on fact by taking Rs.3000/- as monthly salary of the deceased for determination of multiplicand by ignoring the fact that the job of a driver is a skilled job. The Tribunal should have taken Rs.6000/- per month as the salary of the deceased and 1/3rd should have deducted from his monthly salary towards his personal expenses.

The appellants claimed compensation under the heading of loss of dependency as they were all dependents upon the earnings of the deceased Susil Rout. It is an undisputed fact that Susil Rout was working as a driver of the car which is a skilled job. Appellants have stated in the claim petition and in the evidence of PW-1 that the deceased was earning Rs.5000/- per month. The oral evidence of PW-1 is not accepted by the Tribunal, solely for the reason that the appellants did not produce documentary evidence to prove the monthly salary of the deceased as Rs.5000/- per month as claimed by them. However, it had taken income of the deceased at Rs.3000/-, for the purpose of determining the multiplicand. Out of Rs.3000/- p.m., 1/3rd amount was deducted towards personal expenses of the deceased and arrived at Rs.3,84,000/- towards loss of dependency. Out of that compensation, 50% was deducted towards contributory negligence on the part of the deceased and Rs.1,92,000/- was awarded under the above heading. The compensation awarded by the Tribunal is approved by the High Court, which is not only erroneous in law but also suffers from error in law. The Tribunal ought to have taken the salary of the deceased driver at Rs.6000/- by taking judicial notice of

the fact that the post of a driver is a skilled job. Though the claim of the appellants is Rs.5000/- as monthly salary of the deceased for the purpose of determining the loss of dependency, the actual entitlement of the salary of the deceased should have been taken at Rs.6000/- per month by the Tribunal for awarding just and reasonable compensation, which is the statutory duty of the Tribunal and the Appellate Court.”

Relevant extract of decision in Prem Kumar and others case (supra) :

3. “This appeal has been filed by Prem Kumar-injured for enhancement of compensation. Counsel for the claimant has argued that the compensation awarded is highly inadequate. The claimant was 26 years old when he met with the accident in 2008 and has suffered 100% disability. This fact has not been denied. As per him, for 100% disability, a sum of Rs.2 lacs had to be awarded and, therefore, it has to be held that nothing has been awarded on account of pain and suffering, loss of income, loss of amenities of life and attendant expenses both up-till now and for future medical treatment.

4. I find this to be correct. Prem Kumar was the driver of TATA 407 vehicle and it was claimed that his income was Rs.7000/- per month. However, no proof has been placed on record. Counsel for the appellant has relied upon a decision of the Hon'ble Supreme Court in Minu Rout v. Satya Pradumna Mohapatra, 2013 (4) RCR (Civil) 871 where the income of a driver in the year 2006 was taken at Rs.6000/- per month, and states that in the year 2014, the income must be taken to be more.

5. I accept this argument and take the income at Rs.6500/- per month. Since the appellant was 26 years of age, he would be entitled to 50% as future prospects. Since he suffered 100% disability, the entire income worked out would be loss of income and multiplier of 17 would be applicable in the present case. I further award a sum of Rs.1

lac for pain, and suffering, Rs.1 lac of amenities of life and Rs.1 lac for future medical expenses.

Relevant extract of decision in Mahrinish and others case (supra) :

“1. The Appellant seeks enhancement of compensation of Rs.5,47,460/- awarded for the death of Gulam Haider, who was aged 49 years and died in a motor accident which occurred on 24.09.2009. There is no Appeal by the driver, insured and insurer; thus I am not to go into the question of negligence.

2. The Claims Tribunal in the absence of any documentary evidence did not rely upon the affidavit of Mehrunisa, the deceased's wife who claimed the deceased's income to be Rs.8,000/- per month. The Tribunal took the minimum wages of skilled worker i.e. Rs.4377/- deducted 25% towards personal expenses as the number of dependents was 5 and applied multiplier of '13' as per the age of the deceased.

*3. It is true that the Appellants were unable to place on record any proof with regard to the deceased employment and his actual income. The Appellant No.1 was a resident of Bihar. The deceased's driving licence Ex.PW-1/3 to drive MMV/HMV was proved on record. The accident took place while the deceased was driving the truck with another truck. In the circumstances, it is established that the deceased was working as a truck driver. The salary of a truck driver, a bus driver, a motor car driver cannot be the same although all of them are skilled worker. In my view, salary of a truck driver can be assumed to be at Rs.250/- per day i.e. Rs.7500/- per month. On applying the principle of Sarla Verma &Ors. v. Delhi Transport Corporation &Anr., (2009) 6 SCC 121, the loss of dependency come to Rs.8,77,500/- (7500x12x13x3/4).
”*

5. In the instant case, the accident took place on 24.03.2011, therefore, the income of the deceased is taken as Rs.8500/- per month. Deduction on personal expenses of the

deceased is to be made @ 1/4th of his income in terms of paragraph No. 30 of the decision in Sarla Verma vs. Delhi Transport Corporation and another 2009(6) SCC 121, and not @ 1/3rd of the income of the deceased since deceased left behind four dependents. Relevant extract of the decision in Sarla Verma's case (supra) is reproduced as under:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view 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 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.”

7. Since in the aforementioned case, in the case of death of a truck driver in an accident on 24.03.2011, as against income of Rs.6,000/- per month assessed by the Tribunal, income assessed by this court was @ Rs.8500/- per month, therefore, in the instant case, in view of the death of a truck driver in a motor vehicular accident on 18.10.2013, income of the deceased is liable to be taken into account @ Rs.10,000/- per month. However, as against Rs. 25,000/- no amount is admissible on account of loss of love and affection in view of the decision of Hon'ble the Supreme Court in **Satinder Kaur @ Satwinder Kaur vs. United India Insurance Co. Ltd. Law Finder Doc Id # 1729112**, as against 30 % of the income of the deceased taken into account towards future prospects, only 25 % of the income of the deceased was liable to be taken into account in terms of paragraph 61(iv)

of the decision in Pranay Sethi’s case (Supra) in view of the deceased being more than 40 years but less than 50 years, likewise as against nil amount on account of loss of filial consortium, a sum of Rs. 44,000/- is liable to be awarded and as against Rs. 15,000/- awarded towards funeral expenses and no amount on account of loss of estate, Rs. 16,500/- on each count is liable to be awarded in view of the decision in Pranay Sethi’s case (Supra) to increase the compensation on said heads by ten percent every three years.

8. Accordingly, in the light of the position noted above, details of compensation awarded by the Tribunal and the compensation assessed by this Court is as under :-

Sr. No.	Head	Amount assessed by Tribunal in Rupees	Amount assessed by this Court in Rupees
1.	Income of the deceased	Rs.6000/- per month	Rs.10,000/-
2.	Future prospects	30% of Rs.6,000/- = Rs.1800/- (6000 + 1800 = 7800/-).	25% of Rs.10000/- = 2500 (10000 + 2500= Rs.12500/-)
3.	Deduction	50%of Rs.7800/-= Rs.3900/-	50% of Rs.12500/- = Rs.6250/-
4.	Dependency	7800-3900= 3900	12500-6250= 6250/-
5.	Multiplier applied	14	14
6.	Compensation awarded	3900x12x14= 6,55,200/-	6250x12x14 = 10,50,000/-
7.	Love and affection	Rs.25,000/-	Nil
8.	Loss of Consortium	Nil.	Rs.44,000/-
9.	Funeral Expenses	Rs.15,000/-	Rs.16,500/-
10.	Loss of Estate	Nil	Rs.16,500/-
11.	Interest	8% per annum	8% per annum
Total		Rs.6,95,200/-	Rs.11,27,000/-

7. In the light of the position noted above, the appeal is allowed, award modified and as against compensation of Rs.6,95,200/- awarded by the learned Tribunal, the appellant/claimantis held entitled to award of compensation of Rs.11,27,000/-along with interest @8% per annum with effect from the date of the claim petition till date of payment, less payment if any already made.

(B.S. Walia)
Judge

01.05.2023
rajesh

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