IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 6571/2015 (O&M)

Date of decision: 30.01.2023

Joti

………..Appellant

Vs.

Balwinder Singh and others

………..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kushagra Mahajan, Advocate for the claimant/appellant.

Service upon respondent no.1-driver dispensed with vide order Dated 11.4.2016

Mr. Vinod K.Kaushal, Advocate for respondent no.2-Owner Of Trailer No. PB-04-N-4386.

Mr. Harsh Aggarwal, Advocate for respondent no.3-Ins.Co.

<u>Nidhi Gupta, J.</u>

<u>CM 20528-CII/2015</u>

Since there is delay of 187 days in filing the appeal, the aforesaid application has been filed seeking condonation of said delay. The application is supported by an affidavit of the appellant.

For the reasons stated in the application, duly supported by the affidavit of the appellant and the fact that the same has not been contested by respondents by filing reply thereto, the application is allowed and delay in filing the appeal is condoned.

Main Appeal.

Present appeal has been filed by the sole claimant/ mother of the deceased, seeking enhancement of compensation of Rs.6,78,000/- granted by the Ld. Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as 'the Ld. Tribunal') vide Award dated 12.11.2014 passed in MACT Case No.14881(23112) of 2013 in a petition u/s 166 of the Motor Vehicles Act.

Brief facts of the case are that the Ld. Tribunal upon appraisal of the pleadings and evidence adduced before it by the parties, concluded that deceased Suhail Gupta had died due to injuries suffered by him in a road side accident that took place on 7.7.2013 due to rash and negligent driving of Trailer (*Tralla*) bearing registration No. PB-04-N-4386 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1; owned by respondent no.2; and insured by respondent no.3. Respondents have been held jointly and severally liable to pay the compensation.

Learned counsel for the appellant seeks enhancement inter-alia, on the ground that income of the deceased has been taken on the lower side. It is submitted by learned counsel that the deceased was working as a Computer Clerk in Jeevanjot Hospital from where he was drawing monthly salary of Rs.10,000/-. It is submitted that the deceased was also working part time with Sahil Collections w.e.f. 1.4.2012 on a salary of Rs.5000/- per month till his death. It is submitted that accordingly, the Tribunal is in grave error in taking the income of the deceased as only Rs.4000/- per month.

It is further submitted by Ld. Counsel that he was not pressing the income of the deceased in regard to the Rs.5000/- earned by him from his employment with Sahil Creations, as the Income Tax Returns produced by Mr. Sahil Gupta, Proprietor of Sahil Creations, depicted no payment of Rs.5000/- per month to the deceased, and also in view of the fact that said Sahil Gupta is brother of the deceased.

It is submitted that however, cogent evidence has been led by the claimant to show that the deceased was working as a Computer Clerk at Jeevanjot hospital and earning Rs.10,000/- per month. As such, Ld. Tribunal is in error in taking the income of the deceased as Rs.4000/- per month only.

It is then submitted that even if salary of the deceased is not taken to be Rs.10,000/- per month even then monthly income of the deceased should be taken as per minimum wages payable to a skilled worker at the relevant time in view of the fact that the deceased was admittedly 10+2 pass. It is submitted that as per Notification dated 1.3.2013 issued by the State of Punjab the minimum wages admissible to a skilled worker was Rs.7400/- per month, and that of an unskilled worker was Rs.5700/- per month.

It is next submitted that no consortium has been awarded to the claimant-mother who is entitled to Rs. 40,000/- by way of parental consortium. It is lastly submitted that rate of interest @ 7.5% per annum be granted from the date of filing of the claim petition till realization.

Per contra, learned counsel for the respondent Insurance Company submits that in case, this Court enhances the compensation, since there is delay of 187 days in filing the appeal, the appellant be not granted payment of interest for this period.

On merits, Ld. counsel for the respondent submits that no cogent or convincing evidence has been produced by the appellant to prove that the deceased was employed as Computer Clerk with Jeevanjot hospital, or that he was drawing a salary of Rs.10,000/- per month. Ld. Counsel submits that on the contrary, the evidence reveals that the entire record has been manufactured and manipulated by the claimant in order to get the compensation. Ld. Counsel refers to the testimonies of the witnesses, as also other evidence on record to buttress his contentions.

It is further submitted by ld. Counsel for the respondent that Identity Card of PW1 Vikramjit Singh, Clerk, Jeevanjot Hospital had been placed on record as Ex.PX4, but ID Card of the deceased was not produced. It is submitted that if all the employees of Jeevanjot hospital were given Identity Cards then why was the Identity Card of the deceased not available. It is submitted that accordingly, it is clear that the entire record has been manipulated.

It is further submitted that deceased had no professional degree and was therefore, not entitled to minimum wages of a skilled worker. It is further submitted that presently, interest is being granted @ 6% per annum.

Heard Ld. Counsel for the parties.

In order to prove the employment of the deceased with Jeevanjot hospital, PW-1 Vikramjit Singh, Clerk, Jeevanjot Hospital was produced as witness by the claimant, who brought with him a Certificate of Salary Ex. P1 issued by Dr. Jagtar Singh, owner of the said hospital. However, perusal of the cross-examination of PW1 at page 173 of the LCR reveals that he has stated that he had not "*brought any documentary proof to show that deceased Suhail Gupta was working as Clerk in our hospital. It is correct that identity card is issued by the hospital to every employee. ... I do not know on the basis of which documents certificate was issued. The hospital is making payment of salary by* *cash. I have not brought the record on the basis of which certificate was issued.*"

Further, a perusal of the examination-in-chief of RW3 Dr. Jagtar Singh, owner of Jeevanjot hospital at page 215 of the LCR shows that he has deposed as follows: "*All the income and expenditure of the hospital or shown in the income tax returns by annexing balance sheet. …… In the hospital we are not regularly maintaining the accounts daily.*" In his cross-examination Dr. Jagtar Singh, RW3, has admitted that "*except attendance register, we are not having any other document to prove Suhail Singh, deceased was our employee. In the hospital there was no record from which entry could be known that Suhail Singh since deceased was getting salary of Rs.10,000/- per month or certificate thereof was issued*".

Ex. PX/2 and Ex. PX/ 3, at pages 321 and page 323 respectively of the LCR, are the Salary Certificates issued to the deceased by RW3. Perusal of the same shows that the deceased was getting his salary in cash since his appointment on 26.2.2013 till his death on 7.7.2013, and which further show that the name of the deceased is not mentioned in the Income Tax record of the Hospital and no Provident Fund had been deducted from his salary. Only Attendance Register Ex. PX/1 for the months of February 2013 to July 2013 has been produced, where the deceased is shown marked present. Further Ld. Counsel for the appellant is unable to explain as to why the deceased had no Identity Card of the Hospital as proof of his employment, especially as PW1 has admitted in his cross-examination that identity card was issued to every employee of the hospital. Further, a perusal of the testimony of PW1 shows that no evidence in support of employment of the deceased or in terms of salary drawn by the deceased has been produced before the Tribunal except Attendance Register.

Thus, in my view it is quite irrefutably established on record that the deceased was not employed with the Jeevanjot hospital as computer clerk. However, it is not disputed that the deceased had passed his 10+2. Accordingly, as per minimum wage Notification dated 1.3.2013 income of the deceased is taken as Rs.7400/- per month, as admissible to a skilled worker. Admittedly, deceased was a bachelor at time of death. Accordingly, a deduction of 50% is made by way of personal expenses. Deceased was 21 years of age at the time of his death as ascertained from his Post Mortem Report Ex. P2. In view of the law laid down by Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, an addition of 40% is to be made by way of future prospects and multiplier of 18 is to be applied. Further, an amount of Rs.70,000/- is also awarded under the conventional heads, as the sole claimant is mother of the deceased.

The enhanced compensation is reworked as under:-

Head	Amount (In Rupees)
Monthly income Rs. 7400-50%	3700/-
Future prospects @ 40%	1480/-
Total dependency	3700+1480x12x18= 11,18,800/-
Conventional heads	70,000/-
Total compensation	11,18.800+ 70,000/- = 11,88,800/-
Less Awarded by the Tribunal	6,78,000/-
Enhanced compensation	5,10,800
Rate of Interest	6% per annum already awarded by the Tribunal is maintained from the

	date of filing of the claim petition till realization.

Appeal stands allowed by modifying the Award in above terms.

(Nidhi Gupta)
Judge

30.01.2023
Joshi

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**