IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 7398/2016 (O&M)
Date of decision: 23.03.2023.

Surjit Kaur and others

………………Appellants

Vs.

Gurwinder Singh @ Major Singh and others

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. RK Shukla, Advocate for the appellants.

Mr. Inderjit Sharma, Advocate for respondent no.3.

Nidhi Gupta, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.3,93,339.80 granted by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') vide Award dated 25.2.2016 passed in MACT No.357(33) dated 14.10.2015 in a petition filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Brief facts of the case are that the ld. Tribunal on the basis of pleadings and evidence before it concluded that the deceased Amrik Singh had died due to injuries suffered by him in a motor vehicular accident that took place on 16.2.2015 due to rash and negligent driving of Indica car bearing registration No. PB-08-AP-1239 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. Claimants are the 70 year old widow, and two major sons aged 35 and 37 years respectively, of the deceased Amrik Singh. Ld. Tribunal awarded compensation as above along with interest @ 9% per annum from the date of filing of the claim petition till realization. The respondents were held jointly and severally liable to pay the compensation.

Learned counsel for the appellants seeks enhancement of compensation inter alia, on the ground that the ld. Tribunal is in error in taking the income of the deceased as Rs.13,417/- per month. It is submitted that the deceased Amrik Singh had retired from State Bank of Patiala from where he was receiving Rs. 13,417/-per month as pension. It is stated that the deceased was also working as Property Dealer from which vocation he was earning Rs.10,000/- per month. It is submitted that accordingly total income of the deceased should have been taken as Rs.23,417/- per month, however, ld. Tribunal has taken the income of the deceased as Rs.13,417/- only.

It is submitted that ld. Tribunal is in error in making a further deduction of 50% of Rs. 13,417/- on account of the fact that the claimant no.1 being widow of the deceased would be receiving 50% of the pension being received by deceased Amrik Singh. It is stated that claimants being three in number, the ld. Tribunal has also made a deduction of $1/3^{rd}$ towards personal expenses from the income of the deceased. It is submitted that Tribunal has therefore, made a deduction of $2/3^{rd}$ of total income of the deceased. It is submitted that while calculating the dependency of the claimants, as per law laid down by the Supreme Court in **Lal Dei & Others v Himachal Road Transport, Law Finder Doc Id # 187804**, the Tribunal could not have made deduction from Family Pension being drawn by family of the deceased. Reliance in this regard is also being placed on judgments of this Court in **Gurdev Kaur and others v Jharmal Singh and another, 2018 ACJ 651** and **Suresh Devi v Girender Singh and another, 2020 ACJ**

581, wherein too, it has been held that family pension received by the widow of the deceased is not to be deducted while computing compensation.

It is further submitted that the ld. Tribunal is in error in holding that claimants 2 and 3 being major sons of the deceased were not entitled to compensation as they were not dependent upon the deceased at the time of his death. It is then submitted that amounts granted under various conventional heads are also on the lower side as Rs.25,000/- ought to have been granted towards transportation charges; and Rs.1 lac ought to have been granted to each of the claimants towards loss of love and affection. It is further stated that instead of multiplier of 5, multiplier of 10 ought to have been applied; and interest should also have been awarded @ 12% per annum instead of @ 9% per annum.

Per contra, ld. Counsel for the respondent-Insurance Company submits that the deductions have rightly been made by the Tribunal, and that the amounts granted under various conventional heads, as well as multiplier, and rate of interest, are already on the higher side. However, ld. Counsel for the respondent Company is unable to cite any case law contrary to the one cited by the ld. Counsel for the appellants.

No other argument has been made.

Heard ld. Counsel for the parties.

Perusal of the impugned Award shows that the ld. Tribunal has taken the age of the deceased to be 70 years on the basis of Ex.P1/copy of the Ration Card in the name of the deceased, as also on the basis of testimony of PW1 Harpreet Singh/ claimant no.2 who testified that his father was 70 years old at the time of his death. Accordingly, ld. Tribunal applied multiplier of 5 which is in conformity with the law laid down by the Hon'ble

Supreme Court in **Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104.**

As regards income of the deceased, it has been found by the ld. Tribunal that claimants led no evidence whatsoever to prove the alleged income of the deceased from the business of Property Dealer. In this regard, ld. Tribunal has made reference to Ex.P11 which is income tax return of the deceased for the assessment year 2012-13; Ex.P12 which is income tax return for the assessment year 2011-12; and Ex.P13 which is income tax return of the deceased for the assessment year 2010-11 – all of which do not reflect any income whatsoever of the deceased from any property dealing business. Even Ex.P6 which is the Bank Account Statement of the deceased, reflects only the monthly pension of Rs.13,417.55. Accordingly, said submission on behalf of the appellants is rejected.

Further, as regards deduction of 50% of pension of Rs.13,417/- as claimant no. 1 is receiving 50% pension, the said deduction made by the ld. Tribunal is liable to be set aside in view of the case law laid down by the Hon'ble Supreme and this Court in the aforesaid authorities in **Lal Dei, Gurdev Kaur,** and **Suresh Devi (supra)** cited by the ld. Counsel for the appellants. Accordingly, income of the deceased is to be taken as Rs.13,417/- per month.

Thereafter, ld. Tribunal has made a deduction of 1/3rd towards personal expenses. In my view, as dependency of claimants 1 and 2 is not proved on record and it is established that they are independently sustaining their families, a deduction of 50% ought to have been made towards personal expenses, as claimant no.1 was only dependent on the deceased. In this regard reference may be made to law laid down by

Hon'ble Supreme Court in ***SLP No.13931 of 2017 titled as "New India Assurance Co. Ltd. Vs. Vinish Jain & Others";*** and of this Court in ***Harpal Kaur & Others Vs. Sita Ram & Others, Law Finder Doc Id # 921104; Narender Nayyar Vs. Sheodan Singh & Others, Law Finder Doc Id # 626136; Sajna Devi & Others Vs. Vijender Kumar & Others, Law Finder Doc Id # 921100*** and ***FAO No. 6758 of 2018 New India Assurance Co. vs. Somti Devi and others,*** wherein it has been held that major sons being not dependent on deceased are not entitled to compensation. It is accordingly, held that appellant Nos.2 and 3 are not entitled to any compensation. Even nothing has been stated or placed on record to show that appellant nos. 2 and 3 were dependent on the earnings of the deceased.

Multiplier of 5 has been correctly applied as the deceased was 70 years of age at time of death. Deceased being a retired Bank employee hence, future prospects were not to be added. Under the conventional heads ld. Tribunal has granted Rs.1 lac as loss of consortium; and Rs.25,000/- for funeral expenses. In my view all the claimants are entitled to Rs.44000/- each towards loss of consortium. Further they are entitled to Rs.16,500/- on account of loss of estate and Rs.16,500/- on account of funeral expenses. Rate of interest awarded by the Tribunal @ 9% per annum is maintained.

Accordingly, claimants/appellants are held entitled to compensation reworked as hereunder:-

Sr.No.	**Head**	**Awarded by Tribunal**	**Reworked compensation in appeal**
1	Income	13417-	Rounded off to Rs.13420/-
2.	Deduction towards personal expenses	$-1/3^{rd}$ + (- 50% pension) = Rs.4472.33	½ = Rs.6710/-

3.	Multiplier	5	5
4.	Total loss of dependency	4472.33 x 12 x5 = Rs.2,68,839.80	6710x12x5= Rs.4,02,600/-
5	Loss of consortium	1,00,000/-	1,32,000/- @ Rs.44000/- x 3 claimants
6	Loss of estate	NIL	16500/-
7	Funeral expenses	25000/-	16500/-
8.	**Total**	**3,93,339.80**	**5,67,600/-**
9.	**Enhanced by**	**Rs. 1,74,260.20**	

The appeal is thus, allowed in the above terms.

Ratio of apportionment, manner of disbursement of compensation, and rate of interest of 9% on enhanced compensation, remain unchanged.

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

23.03.2023 **(Nidhi Gupta)**
Joshi **Judge**

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

RAJINDER PARSHAD JOSHI
2023.03.23 15:48
I attest to the accuracy and
integrity of this document