IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5119 of 2015 (O&M)
Reserved on: 25.01.2023
Pronounced on:05.05.2023

SUKHVINDER KAUR

... Appellant

Versus

JOGA SINGH AND OTHERS

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Kanwardeep Singh Advocate, for the appellant.

Mr. Sanjeev Goyal, Advocate
for respondent No.3-Insurance Company

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SANJIV BERRY, J.

Instant appeal has been preferred by the claimant-appellant against the award dated 16.02.2015 passed by the Motor Accident Claim Tribunal, Karnal (hereinafter referred to as ' the Tribunal').

2. The facts relevant to the present case are that the claimants, wife and son of the deceased-Pritam Singh, had filed the claim petition stating therein that on 18.06.2012, Joga Singh respondent No.1 was off loading loose earth, outside bara of Pritam Singh situated in village Ramba at about 11 p.m. respondent No.1 put truck/dumper bearing No.HR67A-4494 in reverse gear and started reversing the vehicle at a fast speed, struck the vehicle against Pritam Singh, causing multiple injuries due to rash and negligent driving. Pritam Singh husband of the appellant-Sukhvinder Kaur,

succumbed to the injuries. FIR No.352 dated 19.06.2012 was registered against respondent No. 1 Joga Singh. Pritam Singh deceased was aged 53 years and was running saw mill at village Ramba, besides cultivating 15 acres of agricultural land and from both pursuits was earning ₹6,70,500/- per annum.

3. The claim petition was contested by respondents No. 1 and 2 (driver and owner of offending vehicle respectively) *inter alia* on the ground that the same was not maintainable and asserted that no accident took place with the involvement of truck bearing No. HR67A-4494.

4. Respondent No. 3 Insurance Company contends that respondent No.1-Joga Singh was not holding a valid and effective driving licence at the time of the alleged accident and the FIR was registered with ulterior motive in order to extract compensation from the insurer.

5. On the basis of the pleadings and the evidence on the record, the Tribunal established that deceased Pritam Singh had died due to the rash and negligent reverse driving of truck/dumper bearing No. HR67A-4494 by respondent No.1 Joga Singh.

6. Deceased Pritam Singh was cultivating agricultural land and also running saw mill from both these pursuits earning ₹6,70,500/- per annum. Ld. Tribunal assessed income of ₹15000/- per month of the deceased Pritam Singh with annual income as ₹1,80,000/- and added 15% increase by relying on the law laid down by ***Hon'ble Apex Court in case of Rajesh and others Vs. Rajbir Singh and others 2013 ACJ 1403***, wherein the Hon'ble Apex Court has held that 15% increase in the income of the deceased is tenable, if he falls in the age group of 50-60 years. That being

so, ₹27,000/- is further added to the annual income of the deceased and total income arrived at ₹2,07,000/-.

7. The claim petition was filed by wife and son of the deceased. Claimant No.2 son (being married) had failed to establish any loss of dependency. Therefore, the annual dependency is arrived at ₹1,03,500/-. Deceased was 53 years of age as per claim petition whereas the post mortem report Ex.P3, his age mentioned as 55 years. The age as per post mortem report was taken into account which is 55 years and as per ***Sarla Verma's case (Supra)*** multiplier of 11 is applied for the age of 55. By applying 11x ₹1,03,500/- the amount is arrived at ₹11,38,500/-. In addition ₹25,000/- was awarded as expenses incurred on funeral/last customary rites/rituals and ₹1,00,000/- was awarded for loss of consortium.

8. A sum of ₹12,63,500/- was awarded as compensation by learned Tribunal to the claimant No.1 along with interest @ 7.5% per annum from the date of filing of the claim petition till actual deposit and all the three respondents were jointly and severally liable to pay the amount of compensation. The respondent No.3- Insurance Company was given 3 months time to deposit the compensation amount along with interest. Compensation in the tabular form is as under:-

Sr.No.	Heads	Compensation Awarded
1	Income	₹2,07,000/-
2	Deduction 50%	₹1,03,500/-
3	Multiplier 1,03,500/- x 11	₹11,38,500/-
4	Loss of consortium	₹1,00,000/-
5	Funeral Expenses	₹25,000/-
6	**Grand Total**	**₹12,63,500/-**
	Interest	7.5% per annum

9. Learned counsel for the appellant, while addressing arguments, has relied upon the judgments passed by the Hon'ble Apex Court in ***'National Insurance Company Limited vs. Pranay Sethi and Ors.', 2017(4) RCR (Civil) 1009, (Law Finder Doc Id#918174)***; ***'Sarla Verma and Others vs. Delhi Transport Corporation and another' 2009 (3) RCR (Civil) 77 and 'Magma General Insurance Co. Ltd vs. Nanu Ram alias Chuhru Ram and ors.' (2018) 18 Supreme Court Cases 130,*** counsel for the appellant submits that the loss of estate should be Rs.16,500/- and loss of love and affection should have also been awarded. He further submits that future prospects according to ***Pranay Sethi's case (supra)*** should have also been awarded to the claimant on account of death of the deceased. Learned counsel for the claimant-appellant has further contended that the deceased was the only bread earner of the family and learned Tribunal has wrongly assessed the annual income of the deceased and the compensation along with interest awarded by the Tribunal is also on the lower side.

10. On the other hand, learned counsel for respondent No.3 Insurance Company without disputing the law laid down by the Hon'ble Apex Court in ***Pranay Sethi's case (supra)*** submits that amount of compensation has been rightly awarded by the learned Tribunal and there is no need of any interference in the well reasoned award passed by the learned Tribunal.

11. I have gone through the impugned award and the calculations mentioned herein apart from hearing learned counsel for the parties.

12. The annual income of the deceased was Rs.1,80,000/- and as

per the guidelines of ***Pranay Sethi's case (supra),*** 10% of the income towards future prospect is to be added to the receiving amount of the salary. It is not a matter of dispute that the future prospect of 10% of the income of the deceased would be applicable because deceased was admittedly in self employed business and was of aged between 50-60 years. In the judgment of the Constitution Bench in Pranay Sethi's case (supra) Hon'ble Apex Court has affirmed the formula laid down in ***'Sarla Verma's case (supra)*** for the purpose of calculation of deduction towards personal expenses. The relevant para No.13 of the said judgment reads as under:

> *"13. But, such percentage of deduction is not an inflexible rule and offers merely a guideline. In Susamma Thomas, it was observed that in the absence of evidence, it is not unusual to deduct one-third of the gross income towards the personal living expenses of the deceased and treat the balance as the amount likely to have been spent on the members of the family/dependants. In UPSRTC v. Trilok Chandra [1996 (4) SCC 362], this Court held that if the number of dependents in the family of the deceased was large, in the absence of specific evidence in regard to contribution to the family, the Court may adopt the unit method for arriving at the contribution of the deceased to his family. By this method, two units is allotted to each adult and one unit is allotted to each minor, and total number of units are determined. Then the income is divided by the total number of units. The quotient is multiplied by two to arrive at the personal living expenses of the deceased. This Court gave the following illustration: "X, male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs. 3500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for and adult and one unit for a minor. Thus X and his wire make 2+2=4 units and each minor one unit i.e. 3 units in all, totaling 7 units. Thus the share per unit works out to Sarla Verma & Ors vs Delhi Transport Corp.& Anr on 15 April, 2009 Indian Kanoon - http://indiankanoon.org/doc/837924/ 8 Rs. 3500/7=Rs. 500 per month. It can thus be assumed that Rs. 1000 was spent on X. Since he was a working member some provision for his transport and out-of-pocket expenses has to be estimated. In the present case we estimate the out-of-pocket expense at Rs. 250. Thus the amount spent on the deceased X works out to Rs. 1250 per*

month per month leaving a balance of Rs. 3500-1250=Rs.2250 per month. This amount can be taken as the monthly loss of X's dependents." In Fakeerappa vs Karnataka Cement Pipe Factory - 2004 (2) SCC 473, while considering the appropriateness of 50% deduction towards personal and living expenses of the deceased made by the High Court, this Court observed: "What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction." In view of the special features of the case, this Court however restricted the deduction towards personal and living expenses to one-third of the income."

Therefore, deduction of the salary of the deceased would be 1/3rd which comes out to be ₹66,000/- and multiplier of 11 would be applicable, as it is not disputed that the deceased was 55 years of age at the time of accident.

13. Thus, in the light of the above discussion the award requires enhancement and as such the total amount of compensation under all the heads is enhanced as under:-

Sr.No.	Heads	Compensation Awarded
1	Income	₹1,80,000/- p.a.
2	Future prospects 10%	₹18,000/-
3	Total income including future prospects	₹1,98,000/-
4	Deduction (1/3)	₹66,000/-
5	After applying multiplier of 11	₹14,52,000/-
6	Loss of Estate	₹16,500/-
7	Funeral Expenses	₹16,500/-
8	Loss of consortium	₹44,000/-
	Total	**₹15,29,000/-**
	Interest	7.5%

14. Counsel for the appellant insists for fixing the rate of interest @

9% per annum from the date of filing of the claim petition till its realization, however, learned counsel appearing on behalf of respondent No.3-Insurance company submits that the rate of interest should not be over the awarded amount and therefore, it should not be more than 7.5% per annum.

15. I have gone through the judgments cited by the counsel for the appellant and thus, I deem it appropriate to grant the rate of interest @ 7.5% per annum, as has already been granted by the learned Tribunal over the total awarded amount of compensation which is just and fair and require no alteration.

16. Although the learned counsel for the Insurance Company has contended that the respondent No.1 Joga Singh, Driver of the vehicle at the relevant time was not holding any effective driving licence but he could not point out as to how the driving licence possessed by him was not valid at the time of accident. Moreover during course of proceedings before the learned Tribunal no such evidence was ever adduced by the Insurance Company. Whereas, on the contrary it was proved on record that the respondent Joga Singh was having valid driving licence (Exhibit R-1) and the vehicle in question was duly registered vide registration certificate (Annexure R-3) having valid route permit (Exhibit R-2) with Insurance Policy (Exhibit PX). Therefore, in these circumstances the respondents are held jointly and severally liable to pay the amount of compensation to the claimants.

17. Thus, the amount of the enhanced compensation aforesaid shall be payable by respondents No. 1 to 3 jointly and severally with interest @ 7.5% per annum from the date of filing of the claim petition till its realization. However, the first liability being of respondent No.3- Insurance

Company which shall pay the same, to the claimants in above terms after deducting the amount of compensation, if any, paid during course of proceedings.

18. Accordingly the appeal is allowed and the award dated 16.02.2015 passed by Motor Accident Claims Tribunal, Karnal, is hereby modified in above terms.

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

(SANJIV BERRY)
JUDGE

05.05.2023
Gyan

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No