104 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-6324-2015 (O&M)
Date of Decision: 23.01.2023

Meenu and others ...Appellants

Versus

BLR Private Ltd. and others ....Respondents

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

Present: Mr. Vishal Garg, Advocate for the appellants.

None for respondent Nos.1, 2 and 4.

Mr. Puneet Jain, Advocate for respondent No.3.

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B.S.Walia, J (Oral).

CM-19892-CII-2015 and
CM-19893-CII-2015

For the reasons as are mentioned in the application as well as in view of the judgment of this Court in ***Daya Singh vs. Punjab National Bank, 1999 ISJ (Banking) 698 (Law Finder Doc Id #145573)***, the same is allowed. Delay of 2 days in late filing and 65 days in refiling of the appeal is condoned.

FAO-6324-2015 (O&M)

1. Prayer in the appeal is to modify award dated 20.11.2014, passed by the learned Motor Accident Claims Tribunal, Barnala (hereinafter referred to as 'the Tribunal'), by enhancing the compensationof Rs.24,68,000/- awarded to the appellants/claimants i.e. widow, son, daughter and proforma respondent No.4/mother of deceased Rohit Goyal.

2. Learned Counsel contends that the deceased was 27 years of age on the dateof death i.e. 02.09.2012, was working as a Director in a

construction company against salary for which income tax returns for the years 2009-2010, 2010-2011 and 2011-2012 had been filed reflecting total income from salary @ Rs.1,86,315/-, Rs.2,32,885/- and Rs.3,20,094/- respectively. Learned counsel contends that latest ITR of the deceased for the year preceding his death (Ex.C-18) reflecting total income of Rs.3,20,094/- ought to have been taken into consideration while computing the compensation payable but the Tribunal while taking income of the deceased as Rs.16,000/- per month, applied multiplier of '17' and after deducting 1/4th of the income towards personal expenses of the deceased thereby assessed total dependency of Rs.24,48,000/- (Rs.1,44,000x17), awarded Rs.10,000/- on account of loss of consortium to the widow and Rs.10,000/- on account of funeral expenses, i.e. total compensation of Rs.24,68,000/- plus interest @ 9% per annum, with effect from the date of filing of the claim petition till the date of payment, whereas, income of the deceased was required to be taken into account as reflected in the latest ITR i.e. Rs.3,20,094/- per annum less income tax payable i.e. Rs.18,000/- (i.e. Rs.3,02,094/-) besides appellants-claimants were entitled to award of future prospectus @ 40% of the aforementioned established income of the deceased on account of his working in a private employment and being 27 years of age, while computing compensation payable in view of the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009. Learned counsel further contends that as against loss of consortium of Rs.10,000/- awarded to the widow, each of the appellants/proforma respondent No.4 are entitled to Rs.44,000/- on account of loss of spousal, parental and filial consortium (total Rs.1,76,000/-) in view of the decision of Hon'ble the Supreme Court in the case of Magma General Insurance Co. Ltd. vs. Nanu Ram Alias

Chuhru Ram, 2018 (4) RCR (Civil) 333 and United India Insurance Company Ltd. Vs. Satinder Kaur alias Satwinder Kaur and others, 2021 (11) SCC 80. Learned Counsel further contends that the appellants/proforma respondent No.4 are entitled to award of Rs.16,500/- on account of loss of estate besides Rs.10,000/- awarded on account of funeral expenses is liable to be enhanced to Rs.16,500/-, as per the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

3. Learned counsel for the Insurance Company contends that the income of the deceased is liable to be taken into account on average basis as in the case of a self-employed person doing business,it is not certain that the income will sustain in the succeeding year.

4. I have considered the submissions of learned counsel.

5. Admittedly, the deceased was not doing business and was working as a Director in a Construction Company against salary, which as per the income tax return for the years 2009-2010, 2010-2011 and 2011-2012 was Rs.1,86,315/-, Rs.2,32,885/- and Rs.3,20,094/- respectively. Learned counsel for the appellants has relied upon the decision of Hon'ble the Supreme Court in Malarvizhi&Ors. - Appellants Versus United India Insurance Company Limited &Anr. Civil Appeal No.9196-97 of 2019 (SLP (C) Nos. 9630-31 of 2019), decided on 09.12.2019, wherein as against the income tax returns filed by the deceased for the financial year 1995-1996 to 2000-2001, income declared for the financial year 1997-1998, being the highest, was taken as the annual income of the deceased therein by the High Court. On appeal, Hon'ble, the Supreme Court observed as

> " *We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available.*

The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased.

6. As per the aforementioned decision, income tax return reflecting the highest income was taken into account for computing the compensation payable while ignoring the other income tax returns, which reflected reduction in the annual income of the deceased.

7. Accordingly, in view of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra), Magma General Insurance Co. Ltd., Malarvizhi's case (supra) and United India Insurance Company Ltd., the appellants are held entitled to the award of following compensation:-

Sr. No.	**Head**	**Amount assessed by the Tribunal in Rs.**	**Amount assessed by this Court in Rs.**
1	Annual Income	1,92,000 Rs.16000x12 = Rs.1,92,000/_	Income = 3,20,094 Tax = 18000 Total Income: 320094 - 18000 = 3,02,094.
2	Future prospects	Nil	40% of Rs.3,02,094/- i.e. Rs.1,20,837/-. Total Income : Rs.3,02,094/- + Rs.1,20,837/- i.e. Rs.4,22,931/-
3	Deduction towards personal expenses of deceased	1/4th i.e. 1,92,000/- - Rs.48,000 = Rs.1,44,000/- per annum.	1/4th i.e. 4,22,931/- - 1,05,732 = Rs.3,17,199/-.
4	Multiplier applied	17	17

5	Compensation awarded	1,44,000 x 17 = 24,48,000/-	3,17,199 x 17 = 53,92,383/-.
6	Loss of consortium	Rs.10,000/- (to widow only)	Rs.44,000/- to each of the appellants/proforma respondent No.4 i.e. Rs.1,76,000/-
7	Funeral expenses	10,000/–	16,500/-
8	Love and affection	Nil	Nil
9	Loss of estate	Nil	16,500/-
10	Interest	9% per annum	9% per annum
11	Total	Rs.24,68,000/-	Rs.56,01,383/-

8. Accordingly, as against the compensation of Rs.24,68,000/- awarded by the Tribunal, the appellants/proforma respondent No.4 are held entitled to award of compensation of Rs.56,01,383/- along with interest @ 9% per annum (less amount if any already paid) w.e.f. the date of filing of the claim petition till date of payment, as per ratio determined by the Tribunal. The Insurance Company shall make payment of compensation to the appellants and proforma respondent No. 4 after making deduction of the tax liability if any qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

9. Appeal is accordingly allowed and award dated 20.11.2014, passed by the learned Tribunal is modified to the extent as noted above.

(B.S.Walia)
Judge

23.01.2023
rajesh

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