IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

261 **FAO No.16066 of 2018 (O&M)**
Date of Decision : 21.03.2023

Shashi Sharma @ Shashi Surajbhan Sharma and Another ....Appellants

VERSUS

Jaspreet Singh and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Arora, Advocate for the appellants.

Mr. D.P. Gupta, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

The present appeal has been preferred against the award dated 21.08.2018 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal') challenging the quantum of compensation awarded to the claimant-appellants on account of death of Pooja Sharma (hereinafter referred to as the 'deceased'). Since the factum of the accident is not in dispute, the facts are not being adverted to for the sake of brevity.

Learned counsel for the claimant-appellants would contend that income of the deceased has been assessed as Rs.15,000/- per month merely on conjectures and surmises ignoring the evidence on the record. Learned counsel for the claimant-appellants would further contend that the claimant-appellants had produced letter of offer for employment (Ex.P15), employment letter (Ex.P16), letter of performance review (Ex.P-17), confirmation of service (Ex.P18), letter regarding change of name of employer's company (Ex.P19), appraisal letter (Ex.P20), salary appraisal (Ex.P21), salary slips for the months of June and July, 2016 (Ex.P22 &

Ex.P23) and pay slip for the month of March 2014 (Ex.P24). Learned counsel for the claimant-appellants has further contended that all the said evidence has been rejected by the Tribunal only on the ground that income tax returns of the deceased have not been brought on the record and further that the audit report of the company has not been brought on the record. It is further the contention that there was sufficient evidence on the record to show that the salary of the deceased in the month of June 2016 i.e. prior to the date of the accident i.e. 10/11.07.2016 was Rs.38,250/- per month. Learned counsel for the claimant-appellants while relying upon the judgment of the Hon'ble Supreme Court in case of **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021 (4) RCR (Civil) 642]** has contended that the amount awarded under the heads of loss of estate and funeral expenses would have to be increased in consonance with the said judgment. It is further the contention that no amount has been awarded under the head of loss of consortium to the claimant-appellants and being mother and sister of the deceased, they both are entitled to Rs.44,000/- each under the head of loss of filial consortium as per the law laid down by Hon'ble Supreme Court in cases of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree** *(supra)*.

Per contra learned counsel for respondent No.3 has contended that the deceased, if was earning Rs.39,000/- per month, would be liable to pay income tax and since her income tax returns were not produced, hence the Tribunal has rightly assessed the income of the deceased as Rs.15,000/- per month. It is further the contention of learned counsel for respondent

No.3 that no amount is payable to the sister under the head of loss of consortium.

In the present case the Tribunal has awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.15,000/-
2	Future prospects @ 40%	[15000 + 6000] = Rs.21,000/-
3	Income after applying ½ deduction towards personal expenses of the deceased	[21000 - 10500] = Rs.10,500/-
4	Annual dependency	[10500x12] = Rs.1,26,000/-
5	Multiplier of 16	[126000x16] = Rs.20,16,000/-
6	Loss of estate	Rs.15,000/-
7	Funeral expenses	Rs.15,000/-
	Total Compensation	**Rs.20,46,000/-**
	Interest	**7.5% per annum**

I have heard learned counsel for the parties.

The claimant-appellants herein while leading extensive evidence have produced on record the following documents :

1. Letter of offer for employment as Ex.P15
2. Employment letter as Ex.P16
3. Letter of performance review as Ex.P-17
4. Confirmation of service as Ex.P18
5. Letter regarding change of name of employer's company as Ex.P19
6. Appraisal letter as Ex.P20
7. Salary appraisal as Ex.P21
8. Salary slips for the months of June and July 2016 as Ex.P22 and Ex.P23
9. Pay slip for the month of March 2014 as Ex.P24.

PW2, Administrative Officer of the company in which the deceased was working, has stepped into the witness-box and was subjected to lengthy cross-examination, however, nothing could be elicited from him. There is nothing to the contrary and there is no reason to disbelieve the evidence led by the claimant-appellants. Merely because the income tax returns were not produced would not be a reason to disbelieve the documents produced on record by the claimant-appellants. Learned counsel for respondent No.3 has not been able to show any evidence to the contrary nor point out from the cross-examination of PW2 anything which could even remotely suggest that the income of the deceased was not as claimed by the claimant-appellants. In view thereof, the income of the deceased is assessed as Rs.38,250/- per month on the basis of her last salary slip for the month of June 2016. The Tribunal has rightly applied a multiplier of 16 keeping in view the age of the deceased which was 31 years. 50% deduction has also rightly been made towards personal expenses of the deceased as she was a single lady. Further, an addition of 40% has also rightly been made towards loss of future prospects of the deceased. The claimant-appellants would be entitled to Rs.16,500/- instead of Rs.15,000/- towards loss of estate and Rs.16,500/- instead of Rs.15,000/- towards funeral expenses of the deceased. The argument of learned counsel for respondent No.3 that the sister would not be entitled to any amount of compensation under the head of loss of consortium deserves to be rejected in view of the judgment of Hon'ble Supreme Court in the case of **Magma General Insurance Company Limited** *(supra)* wherein the father and sister of the deceased were awarded an amount of Rs.40,000/- each under the head of loss of filial consortium. Hence, in view of the law laid down by the Hon'ble Supreme Court, both the mother and sister of the deceased in the present case would also be entitled to Rs.44,000/- each under the head of loss of filial consortium.

In view of the above, the enhanced amount of compensation to which the claimant-appellants are held entitled to is re-calculated as under :

Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly income of the deceased	Rs.38,250/-
2	Annual Income of the deceased	[38,250 x 12] = Rs.4,59,000/-
3	Annual dependency of the claimants after deduction of 1/2 towards personal expenses of the deceased	[4,59,000 – 2,29,500] = Rs.2,29,500/-
4	Future Prospects @ 40%	[2,29,500 + 91,800] = Rs.3,21,300/-
5	Multiplier of 16	[321300 x 16] = Rs.51,40,800/-
6	Loss of Consortium Filial	Rs.88,000/- (44000 x 2) **(Total Rs.88,000)**
7	Loss of Estate	Rs.16,500/-
8	Funeral Expenses	Rs.16,500/-
	Total Compensation	**Rs.52,61,800/-**
	Amount Awarded by the Tribunal	**Rs.20,46,000/-**
	Enhanced amount	**Rs.32,15,800/-**

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of the filing of the claim petition till the realization of the entire amount. The enhanced amount shall be apportioned between the claimant-appellants as directed by the Tribunal.

In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

21.03.2023
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO