IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

208-2s

FAO-2326-2004 (O&M)
Decided on : 11.11.2024

Ashia and others

. . . Appellant(s)

Versus

General Manager, Haryana Roadways and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Maneet Kaushik, Advocate for
Mr. Ashit Malik, Advocate, for the appellant(s).

None for the respondent(s).

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SANJAY VASHISTH, J. (Oral)

1. The present appeal has been filed by the appellants/ claimants (hereinafter referred as 'claimants') in MACT Case No. 106 of 11.12.2002, for modification of award dated 23.02.2004, passed by learned Motor Accidents Claims Tribunal, Panipat (hereinafter referred to as 'learned Tribunal') by way of seeking enhancement of amount of compensation, on account of death of deceased –'Hakimulla' .

2. Briefly stated facts of the case are that on 29.08.2002, Hakimulla (deceased) was driving a motorcycle bearing registration No.HR-06G/8725, and was coming from Roorkee to Muzaffarnagar. When the said motorcycle crossed Manglore and reached near Jhabrera Tirahe on Haridwar-Muzaffarnagar Road, then the bus bearing registration No. HR-57/0252 came from the opposite direction at fast speed, driven in rash and negligent manner by respondent No.3, hit against the motor cycle and deceased succumbed to injuries. The claimant no.2/son of deceased, witnessed the said accident as he was following the deceased, on his own motorcycle.

3. Appellants – Ashia (widow of the deceased), nine children of the deceased namely – Wakil, Balkesh, Gulshana, Afsana, Imran, Saddam, Tipu, Issarc and Sonia, filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 (in short, 'MV Act'), seeking compensation on account of death of 'Hakimulla' in the motor vehicular accident.

After going through the record, appreciating the evidence, examining the witnesses and hearing the arguments of both the sides, learned Tribunal assessed the monthly income of deceased, as a skilled labourer, as Rs.3000/- per month and deducted 1/3rd on account of his personal expenses. It applied the multiplier of '16' and granted Rs.6000/- towards Funeral Expenses. Accordingly, the claimants were awarded total compensation to the tune of Rs.3,90,000/- and same to be equally divided amongest the claimants. Compensation amount is ordered to be paid to the claimants by respondents jointly and severally with interest @ 9% per annum, from the date of filing of the petition till its realization.

Applicants/claimants have filed the present appeal seeking enhancement of compensation, over and above the amount awarded by learned Tribunal.

4. While addressing arguments, counsel for the appellants submits that the learned Tribunal has erred in determining the monthly salary of the deceased – Hakimulla, as Rs.3000/- p.m. only, despite he being held as a skilled labourer (carpenter). Therefore, his income should be taken more than Rs.3000/- p.m. The learned Tribunal has failed to enhance the income of deceased on account of future prospects. It has also deducted personal expenses on the higher side and has not even granted compensation on account of loss of consortium and loss of estate, etc.

5. Learned Counsel for appellants/claimants has placed reliance upon ***Chameli Devi & ors.* v. *Jivrail Mian & ors.*, 2019(5) R.C.R. (Civil) 884** and also submits that the Hon'ble Apex Court assessed the monthly income of a 'Carpenter' as Rs.5000/- p.m., in a case where accident occurred in the year 2001 and carpenter died in an accident. Notably, no documentary evidence was produced in that case in regard to the monthly income of the carpenter.

Paragraph No.3 of the above cited judgment is reproduced here under:-

> *"3. Keeping in view the fact that the accident took place in 2001 and the deceased was a carpenter, it would not be unjustified to assess his income at Rs.200/- per day. It is true that the carpenter may not get work everyday, hence, we assess the income at Rs.5000/- per month. Adding, 40% for future prospects i.e. Rs.2000/-, the total income works out to Rs.7000/-.Deducting 1/5 for personal expenses, keeping in view a large number of dependents, the datum figure comes out to Rs.5,600/-per month or Rs.67,200/- per year. Applying multiplier of 16, the compensation works out to Rs.10,75,200/-. Rs.70,000/- is added towards other non-conventional heads as laid down in* ***National Insurance Co. Ltd v. Pranay Sethi & Ors. [201(4) RCR(Civil) 1009: (2017) 16 SCC 680].*** *The total compensation comes out to Rs.11,45,200/-."*

In the present case, accident took place in the year 2002, and no proof of income of deceased as carpenter was produced. However, I have gone through the findings recorded by the Ld. Tribunal in paragraph No.13 of the said award, wherein, it has been specifically observed that the deceased was working as 'carpenter'. Since no proof of income is available, I have considered the submissions and by following the principle laid down by the Hon'ble Apex Court in ***Chameli Devi's case (supra)***, this Court also holds monthly income of the deceased as Rs.5000/-p.m.

6. This Court has gone through the impugned award and the calculations mentioned therein, and also heard learned counsel for the parties. No doubt that different Courts at different times were at diversions in their opinion when there was no clarification by the law makers despite recommendations by the Hon'ble Apex Court, all the major issues were referred to the larger Bench, and accordingly, Constitution Bench was constituted in ***National Insurance Company Limited v. Pranay Sethi and Others, 2017 (4) RCR (Civil) 1009 : Law finder Doc ID #918174.*** Thus, for the purpose of reaching out to an appropriate amount of compensation for adjudging the rights of the claimants, guidelines laid down in the judgment of the Constitution Bench in **Pranay Sethi's case (supra)**, would help the Courts.

7. From the evidence on record, it stands established that the deceased aged about 40 years and as per ***Pranay Sethi's case (supra)***, addition of 25% on the count of 'future prospects' has to be made and total amount of earnings comes to be Rs.5,000/- + Rs.1,250/- (25% of Rs.5,000) = Rs.6,250/- p.m.

8. Out of the same, keeping in view the number of dependents i.e.

widow and nine children 1/5th is to be deducted on account of 'personal expenses', which is to the extent of Rs.1,250/- and the residue amount works out to be Rs.5,000/- per month and annual income comes out to be Rs.60,000/-. Considering the age of the deceased as per ***Smt. Sarla Verma & Ors.* v. *Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121**, the appropriate multiplier to be applied in the present case is '15' and after, so applying this multiplier, the loss of dependency comes to be Rs. 60,000/-x 15 = Rs.9,00,000/-.

9. Rest of the parameters are assessed and calculated in accordance with the judgment of this Court titled as ***Sangtari Muleem v. Karnail Singh*, (FAO No. 2538 of 2006, D/d. 07.07.2023) : Law Finder Doc Id # 2270482**, which is in consonance with the settled proposition of law laid down by the Apex Court in ***Pranay Sethi's case (supra)***, and ***Smt. Sarla Verma's case (supra)*** and ***Smt. Anjali and others* v. *Lokendra Rathod and Others*, 2023 (1) R.C.R. (Civil) 229 : Law Finder Doc Id #2081014.**

Claimants are entitled for Rs.25,000/- as compensation under the head of funeral expenses and Rs.20,000/- towards loss of estate. Loss of consortium is to be awarded to the tune of Rs.48,400/- each, to the all of the claimants in the instant appeal.

For the sake of convenience, amount of compensation assessed and calculated by this Court is produced below in a tabular form:-

Sr. No.	Head	Compensation Awarded By The Learned Tribunal	Compensation Awarded By The High Court
1.	Income	Rs.3,000/- p.m.	Rs.5,000/- p.m.
2.	Future Prospects	NIL	25%
3.	Deduction towards personal expenses	1/3rd	1/5th

4.	Total annual income	Rs.24,000/-	Rs.60,000/- (5000 x 12)
5.	Multiplier	16	15
6.	Loss of Dependency	Rs.3,84,000/-	Rs.9,00,000/-
7.	Funeral Expenses	Rs.6,000/-	Rs.20,000/-
8.	Loss of Estate	NIL	Rs.25,000/-
9.	Loss of Spousal Consortium	NIL	Rs.48,400/-
10.	Loss of Parental Consortium	NIL	Rs.4,35,600/- (48,400 x 9)
11.	Loss of Filial Consortium to parents	NIL	NIL
12.	Total Compensation to be paid	Rs.3,90,000/-	Rs.14,29,000/-

10. Thus, keeping in view the aims and objects of the beneficial legislation of providing relief to the victims or their families, the total compensation payable to the appellants/claimants is enhanced to **Rs.14,29,000/- (Rupees Fourteen Lacs and Twenty Nine Thousands only)** as against Rs.3,90,000/-.

11. The awarded compensation shall be paid to the appellants/claimants within a period of three months from the date of this order, along with interest @ **7.5%** per annum from the date of filing of claim petition till the date of payment of compensation to the appellants/claimants, with the same terms, which have been mentioned by learned Tribunal.

It is further clarified that in case compensation amount is not paid within above mentioned stipulated period, rate of interest would be 9% per annum from the date of filing of claim petition till its actual realization.

And, in case any further delay is caused beyond six months from today, compensation amount would be payable alongwith interest at rate of 12% per annum from the date of filing of claim petition till its actual realization.

12. Needless to mention that out of the total payable compensation amount, already paid amount (if any) in compliance to the impugned award would be adjusted.

13. **Therefore, by partly modifying the award, appeal is allowed with the terms indicated here-above.**

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

(SANJAY VASHISTH)
JUDGE

November 11, 2024
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No