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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3366-2019 (O&M)
Date of Decision : 18.10.2024

Meena & Anr ... Appellant(s)

Versus

Jaspreet Singh & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Arora, Advocate and
Mr. Vipul Sharma, Advocate for the appellants.

Mr. Gaurav Gupta, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

CM-11685-CII-2019

1. This is an application for condonation of delay of 138 days in filing the appeal.

2. For the reasons stated in the application, delay of 138 days in filing the appeal is condoned. CM stands disposed off. However, the claimant-appellants shall not be entitled to any interest for the period of delay in filing the appeal.

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3. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal vide the impugned award dated 21.08.2018.

4. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.

5. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Name of the Head	Amount of compensation
1.	Monthly income of the deceased	Rs.11,700/-
2.	After addition of the future prospects at the rate of 40 %, monthly income	Rs.11,700/-+Rs.4680/- = Rs. 16,380/-
3.	Monthly dependency 50%	Rs. 8,190/-
4.	Annual dependency	Rs. 8190/-x12=98,280/-
5.	After applying multiplier of 18 as per the age of the deceased.	Rs.17,69,040/-
6.	Loss of estate	Rs.15,000/-
7.	Funeral Expenses	Rs.15,000/-
	Total	Rs.17,99,040/- rounded off to Rs.18,00,000/-

6. Learned counsel for the claimant-appellants would contend that the income of the deceased has been taken as Rs.11,700/- per month, however, the same ought to have been assessed as Rs.13,000/- per month inasmuch as Rs.11,700/- was the figure arrived at after deducting the amount towards Provident Fund and ESI. The learned counsel for the claimant-appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of **Triveni Kodkany & Ors. Vs. Air India Limited & Ors. [2020(4) RCR (Civil) 184]** to contend that the deductions form part of the salary and are not to be deducted while assessing the income. The learned counsel would further contend that the deceased was a permanent employee as has come in the evidence of PW2 – Sumit Chabra – who was the Deputy Manager of the Company where the deceased was employed and he has clearly stated that the deceased was a permanent employee of the Company

and hence an addition of 50% ought to have been made towards future prospects instead of 40%. In support of his contentions, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **The New India Assurance Co. Ltd. Vs. Ashish Ravindra Kulkarni & Ors. [2023 ACJ 1997]**. It is further the contention of the learned counsel that no amount has been awarded under the head 'loss of consortium' and further that the amount awarded under the conventional heads are also on the lower side. In support of his contentions, he has relied upon the judgments of the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

7. *Per contra*, the learned counsel for respondent No.3 would contend that the income has rightly been assessed as Rs.11,700/- per month as per the salary certificate which was produced on the record. It is further the contention of the learned counsel that the deceased cannot be treated as a permanent employee inasmuch as there was nothing on record to depict that she was a permanent employee. It is further the contention of the learned counsel that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

8. I have heard the learned counsel for the parties.

9. In the present case, the income of the deceased has been assessed as Rs.11,700/- per month after deduction of the amount being contributed towards Provident Fund and ESI. Hon'ble Supreme Court in the

case of **Triveni Kodkany** (supra) has held as under :

> *"9. Both the sides have prefaced their submissions by relying on the principles which have been evolved by the Court in determining compensation under the Motor Vehicles Act, where an accident has resulted in death. The table which we have reproduced in the earlier part of the judgment would indicate that the total CTC per annum, on account of the employment of the deceased, to his employer was AED 4,82,395. This comprises of the basic pay, house rent allowance, transport allowance, telephone allowance, LTA, medical aid and gratuity. The ion which has been made by the employer in the salary of the deceased is, in our view, no reason to make any deductions from the total CTC of AED 4,82,395. The consolidated amount is the amount annually borne by the employer on account of the employment of the deceased. Hence, we are unable to accept the reasons which weighed with the NCDRC in making a deduction of AED 30,000 from the total CTC. Similarly and for the same reason, we are unable to accept the submission of Air India that the transport allowance should be excluded. The bifurcation of the salary into diverse heads may be made by the employer for a variety of reasons. However, in a claim for compensation arising out of the death of the employee, the income has to be assessed on the basis of the entitlement of the employee. We, therefore, proceed for the purpose of computation on the basis of the annual income of AED 4,82,395.*
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> *10. The submission which has been made on behalf of the complainants is that in addition to the salary which was paid to the deceased, he was entitled to diverse benefits. These benefits have been adverted to in a letter*

> *dated 21 March 2011 of the Vice President, Human Resources of the employer. The letter indicates that in March 1999, August 1999, November 2001, February 2004 and April 2007, the deceased was given ESOPs by the employer. The letter contains the following statement:*
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> > *"As part of the Talent Development initiative in the organization, Mahendra Kodakany as a key performer was inducted in the Family Jewel Program (FJP) in the year 2006- 07 and thereby graduated to the Business Partner Program (BPP) in the year July 2007 - June 2010. As part of both the programs he was eligible for a benefit (over and above his CTC) amount of INR 4.5 Lacs per annum and INR 13.8 lacs per annum respectively."*

It would hence be seen that the amounts contributed by the employee towards Provident Fund and ESI cannot be deducted at the time of assessing the salary of the deceased and hence the income of the deceased is assessed as Rs.13,000/- per month.

10. Hon'ble Supreme Court in the case of **Ashish Ravindra Kulkarni** (supra) has held as under :

> *7. It is also his case that the future prospects as reckoned at 30% is not justified and the same should have been at 25% since the job of the deceased cannot be considered as permanent employment. Lastly, it is contended the interest as fixed by the High Court at 7.5% per annum is excessive and is without appropriate reason being assigned.*
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> *8. The learned counsel for the respondents/claimants would however seek to sustain the judgment passed by the High Court. On all the aspects which have been urged by the learned counsel for the appellant, it is*

contended that the MACT as well as the High Court have looked into the evidence which was available before it and has thereafter arrived at its conclusion, which does not call for interference.

9. In the light of the contentions put forth, insofar as the salary, we take note that by way of clarification, we had required the learned counsel for the respondents/claimants to point out that the amount paid was after deduction of the tax or proof for payment of tax, since the learned counsel for the appellant had contended that the same has not been done. Alongwith an application, in addition to the documents that were relied on before the MACT, the notice of assessment of the Inland Revenue Authority of Singapore is produced. From the same, it would indicate that from the salary paid to the deceased, tax has been assessed in Singapore. Hence, there is no scope for double taxation on the same income. Therefore, deducting any amount towards tax once over again would not arise. Hence, his salary as reckoned by the High Court is justified and the same does not call for interference.

10. On the aspect relating to the future prospects, having noted the salary that was being drawn by the deceased, we have also taken into consideration that the deceased was employed in TATA Precision Industries. Another employee who was working as the Assistant Manager in Human Resources had been examined as PW-2 before the MACT to prove the same. In that regard, taking note of the evidence tendered by PW-2 to indicate the nature of employment of the deceased as also his prospects, we are of the opinion that the future prospects as reckoned in the instant case is also justified. This is for the reason

> *that though the learned counsel for the appellant seeks to point to the portion of the cross-examination of the said witness to indicate that he had earlier been terminated from TATA Holset Private Limited and had thereafter been appointed in TATA Precision Industries, it would not lead to a conclusion that the job was not of permanent nature. In fact, even if the employment letter indicated that the job could be terminated with 30 days notice as insisted by the learned counsel, that cannot be the basis in as much as the said provision for termination notice would be available to both the parties, namely the employer and the employee and that by itself cannot indicate that the employment was of a temporary nature. Right of the employer to terminate does not suggest it is temporary employment. Such right if exercised has to be in terms of law. Further, from the cross-examination, the suggestion put to PW-2, would only indicate that the deceased who was earlier employed in TATA Holset Private Limited was thereafter taken in another sister concern of the same group providing him better prospects. Therefore even if that aspect of the matter is kept in view, the future prospects as reckoned by the High Court is justified.*

Keeping in view the law laid down by the Supreme Court in the case of **Ashish Ravindra Kulkarni** (supra), 50% addition ought to have been made towards future prospects instead of 40%, keeping in view the fact that the person from the Company who had appeared in the witness box as PW2 - Sumit Chabra, Deputy Manager - had specifically stated that the deceased was a permanent employee of the Company. There was nothing brought on the record by the Insurance Company (respondent No.3 herein) to dispute the said fact. In view thereof, 50% addition is made towards future prospects.

11. In the present case though multiplier '18' as well as 50% deduction has rightly been applied, however, the amount awarded under the conventional heads are on the lower side and no amount has been awarded under the head 'loss of consortium' and hence as per the law laid down by the Hon'ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra), the claimants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses and the claimants (parents of the deceased) would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.13,000/-
2	Annual Income	[Rs.13,000x12] =Rs.1,56,000/-
3	Deduction 50%	[Rs.1,56,000-78,000] =Rs.78,000/-
4	Future Prospects - 50%	[Rs.78,000+39,000] =Rs.1,17,000/-
5	Multiplier - 18	[Rs.1,17,000x18] =Rs.21,06,000/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Filial	 [Rs.48,000/-x2] = Rs.96,000/-
	Total Compensation	**Rs.22,38,000/-**

12. 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 filing of the claim petition till the realization of the entire amount.

The amount shall be apportioned between the claimants as directed by the Tribunal. However, the claimant-appellants shall not be entitled to any interest for the period of delay in filing the appeal.

13. 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.

18.10.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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