IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

FAO-5429-2004 (O&M)
DECIDED ON: 11.11.2024

GIAN ARORA AND OTHERS

.....APPELLANT(S)

VERSUS

GULZAR SINGH AND OTHERS

.....RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. Mohit, Advocate for
Mr. Surinder Deswal Advocate
for the appellants.

None for the Respondents.

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SANJAY VASHISTH, J (ORAL)

1. Present appeal has been filed by the appellants/ claimants (hereinafter referred as 'claimants') in MACT Case No. 45 of 05.09.2001, for modification of award dated 02.09.2004, passed by Ld. Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as 'Ld. Tribunal') by seeking enhancement of amount of compensation, on account of death of deceased –' Shyam Sunder Arora'.

2. Briefly stated facts of the case are that on 23.05.2001, Shyam Sunder Arora (deceased) was driving a scooter No. HR-01-L/7089 and was going towards railway station ,Ambala Cantt, alongwith his son Nitin Arora pillion rider. When the scooter reached near the Samarat Vaishno Dhaba, then the bus bearing registration No. HR-37/1440 came from the opposite direction at fast speed being driven in rash and negligent manner by respondent no.1 and hit against the scooter, resultantly the driver and pillion rider received injuries and deceased/driver succumbed to injuries. Resultantly, FIR No.21, dated 24.05.2001, under Sections 279, 337, 304-A IPC, at Police Station Parav, was registered against respondent No.1.

3. Appellants - Gian Arora (widow of deceased) and three children namely – Preeti Arora, Nitin Arora, and Niraj Arora filed a claim petition under Section 166 read with section 163-A, of the Motor Vehicle Act, 1988, for seeking compensation on account of death of 'Shyam Sunder Arora' in the motor vehicular accident. However, after going through the record, appreciating the evidence, examining the witnesses and hearing the arguments of both the sides, Ld. Tribunal assessed the annual income of deceased by taking into consideration the Income Tax Returns lastly filed by the deceased for the year (1998-1999) (Ex.P-2) showing the annual income as Rs.68,318/- per annum. Tribunal has deducted 2/3rd of the income of the deceased on account of his personal expenses and applied the multiplier of '12'. For Funeral Expenses Rs.10,000/- has been granted and Rs.6000/- has been granted towards medical expenses. Accordingly, claimants were awarded total compensation to the tune of Rs.5,62,000/- and same is to be divided in equal shares. Compensation amount is payable by all the respondents severally and jointly 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 Ld. Tribunal.

4. While addressing arguments, counsel for the appellants submits that the Ld. Tribunal has erred in determining the annual income of the deceased –Shyam Sunder Arora by considering Income Tax Returns of year

1998-1999 and not of the last paid ITR for year 2001-2002. Therefore his annual income should be taken as Rs.83,980/- as per last paid ITR. The Ld. Tribunal has also erred by applying incorrect multiplier and has deducted personal expenses on the higher side. It has also failed to consider the income on account of future prospects and has not even granted compensation on account of loss of consortium and loss of estate etc.

5. Apart from hearing learned counsel for the parties, this Court has gone through the impugned award and the calculations mentioned therein.

No doubt that in a situation where the different Courts at different times were at diversions in their opinion and in the absence of any 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 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.

6. To prove the annual income of deceased the claimants have brought on records the Income Tax Returns for years 1997-1998,1998-1999 and 2001-2002 (Ex.P1 to Ex.P3). However, the accident occurred on 23.05.2001, and claimants were required to produce the Income Tax Returns for the immediate preceding years but the said returns were not produced before the court rather returns for the year 2001-2002 was produced which was infact, filed in the Income Tax Department after the death of deceased.

Hence the court is in consonance with the tribunal considering last filed ITR by the deceased for year 1998-1999 where the annual Income of the deceased was taken as Rs.68,320/-i.e Rs.5,693/- p.m. Therefore, the income of the deceased is assessed as Rs. 5,700/- per month (rounded off).

7. From the evidence on record, it stands established that the deceased was aged about 48 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.5,700/- + Rs.1,425/- (25% of Rs.5,700/-) = Rs.7,125/- per month.

8. Out of the same, keeping in view the number of dependents i.e. widow and three children 1/4th is to be deducted on account of 'personal expenses', which is to the extent of Rs.1781.25/- and the residue amount works out to be Rs.5343.75/- per month and annually which comes out to be Rs.64,125/-. Considering the age of the deceased as 48 years, as per ***Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121**, the multiplier of '13' is applied and after, so applying this multiplier, the loss of dependency comes to be Rs.64,125/- x 13 = Rs.8,33,625/-.

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 the claimants in the instant appeal.

10. 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 Ld. Tribunal*	*Compensation awarded by the High Court*
1	*Income*	*Rs.5.693/- p.m.*	*Rs.5,700/- p.m.*
2	*Future Prospects*	*NIL*	*Rs.7,125 (25% of Rs.5,700 = Rs.1,425)*
3	*Deduction towards personal expenses*	*2/3*	*1/4 (7125/4 = Rs. 1,781.25)*
4	*Total annual income*	*Rs.68,318/-*	*Rs.64,125 (5343.75 x 12)*
5	*Multiplier*	*12*	*13*
6	*Loss of Dependency*	*Rs.5,46,000/-*	*Rs.8,33,625/-*
7	*Funeral Expenses*	*Rs.10,000/-*	*Rs.20,000/-*
8	*Medical Expenses*	*Rs.6,000/-*	
9	*Loss of Estate*	*NIL*	*Rs.25,000/-*
10	*Loss of Spousal Consortium*	*NIL*	*Rs.48,400/-*
11	*Loss of Parental Consortium*	*NIL*	*Rs.1,45,200/-(48,400 x 3)*
12	*Loss of Filial Consortium to parents*	*NIL*	*NIL*
13	*Total Compensation to be paid*	*Rs.5,62,000/-*	*Rs.10,72,000/- (rounded off Rs.10,72,225/-)*

11. 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 (petitioners/claimants) is enhanced to **Rs.10,72,000/- (Rs. Ten Lacs and Seventy Two Thousands only)** as against Rs.5,62,000/-.

The awarded compensation shall be paid to the appellants (petitioners/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 (petitioners/claimants), with the same terms, which have been mentioned by Ld. 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 along-with 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.**

(SANJAY VASHISTH)
JUDGE

November 11, 2024
J.Ram

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