2024:PHHC:162638

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4117-2005
DECIDED ON: 27.11.2024

DEEPANSHU (MINOR) AND OTHERS .....APPELLANTS

VERSUS

PARDEEP KUMAR AND OTHERS .....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. Vivek Suri, Advocate,
Mr. Dushyant Godara, Advocate, and
Mr. Darpan Bansal, Advocate,
for the appellants.

Mr. Arun Gosain, Senior Government Counsel,
for respondent No.3 – UOI

SANJAY VASHISTH, J (ORAL)

1. Present appeal has been filed by the appellants/claimants against the impugned award dated 10.05.2005, passed by learned Motor Accident Claims Tribunal, Panchkula, (hereinafter referred to as 'learned Tribunal'), in MACE case No.130 of 2004 filed by the claimants on account of death of one 'Sunita Rani'.

2. Claim petition was instituted by (1) Deepanshu (minor), aged one and a half years (son of deceased Sunita Rani), (2) Smt. Kuldeep Kaur, and 3) Baldev Singh (parents in-law of Sunita Rani).

While disposing of MACE case No.130 of 2004, claim petition *qua* claimant Nos.2 and 3 (appellant Nos.2 and 3 herein), was dismissed, and claimant No.1 Deepanshu (minor) was awarded

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compensation amount of Rs.6,55,776/-, along with interest @ 6% p.a. from the date of the petition till realisation of the amount.

3. Factual aspect of the case is that on 20.07.2004, constable Ashok Kumar, while driving motor cycle bearing registration No.HR49A-2021, was going from Panchkula to Pinjore. His wife Smt. Sunita Rani, who was also Constable in the Haryana Police, was pillion rider.

4. Due to the rash and negligent driving of the driver of the truck bearing registration No.↑02D 148931K (offending vehicle), owned by respondent No.3 (Government of India, Ministry of Defence), an accident occurred and unfortunately both Sunita Rani and Ashok Kumar died in an accident.

Since, findings recorded *qua* none of the issue has been assailed by the respondents, only question requiring its determination before this Court in the present appeal, is '*whether the compensation amount requires enhancement or not'*.

5. In the impugned award, learned Tribunal assessed the salary of Smt. Sunita Rani based on her salary certificate (Ex. P-8). It records that her gross salary was Rs.8,432/- per month, after deduction on account of G.P.F., G.I.S., and B/F, amounting to Rs.1,600/-, leaving her carry home salary as Rs.6,832/- per month. Her age was assessed as 31 years, and a multiplier of '12' was applied.

6. Counsel for the appellants, while addressing submissions, submits that actual gross monthly salary of Sunita Rani as proved through salary certificate (Ex.P-8) is to be taken into account, and same is

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not considered after deducting the amount under the head of G.P.F., G.I.S. and B/F. He further submits that the claimants have been put at loss by excluding Rs.1600/- from monthly salary

While submitting so, counsel for the appellants relies upon the judgment passed by this Court in **FAO-1272-2006** titled as ***"Charanjit and others vs. Bhupinder Singh and others 2021 (3) PLR 661 Law Finder Id #1888876",*** and judgment passed by Hon'ble Apex Court in **CA-5513-2012** titled as ***"Vimal Kanwar and others vs. Kishore Dan and others 2013(3) SCR 223".***

7. On the other hand, counsel appearing on behalf of respondent No.3 vehemently opposes the contention raised by counsel for the appellants, and submits that the amount of compensation has been rightly assessed by learned Tribunal, and nothing is required to be enhanced. However, counsel for respondent No.3 is unable to rebut submissions addressed by counsel for the appellants through the cited judgments.

8. This Court has gone through the findings recorded in the award and has also heard the submissions addressed by counsel for both the sides.

In the case of **Charanjit Singh (supra),** the Court noticed the argument that the duly proved salary of the deceased was Rs.12,455/- per month, but Tribunal assessed the monthly income of the deceased as Rs.9,200/- after deducting allowances being paid to the deceased.

While noticing the said aspect, this Court followed the principle of law as laid down by Hon'ble Apex Court in the case titled as

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National Insurance Company Ltd. vs. Pranay Sethi and others, (2017) 16 SCC 680, and held that no deduction can be made from the salary, except of the deduction on account of income tax.

Findings recorded in paragraph No.10 of the above cited judgment is reproduced here under:-

> *"Having heard learned counsel for the parties, this Court finds substance in the argument of learned counsel for the appellants. Since, the income of the deceased have been proved to be Rs. 12,455/- per month, therefore, the gross income of the deceased has to be taken at this level only. As per the judgment of the Supreme Court in the case of* ***National Insurance Company Ltd. v. Pranay Sethi and others, (2017) 16 SCC 680,*** *except the deduction on account of income tax, no deduction is to be made from the salary qua other allowances etc. Hence, the income of the deceased has to be taken to be Rs. 12,455/- per month minus the applicable income tax. Still further, as per the above said judgment of the Supreme Court, the claimants are entitled to the compensation on account of loss of future prospects of the deceased @ 50% of the assessed income. The multiplier is also required to be applied as per the age of the deceased. Seen in that context, the applicable multiplier in this case would be 16 and the eligible claimant is entitled to the benefit of future prospects @ 50%. This Court also finds that appellant No.1 is also entitled to Rs. 40,000/- as compensation on account of loss of consortium. Besides this, the amount of compensation is liable to be enhanced by an amount of Rs. 15,000/- on account of loss of estate. The funeral expenses have to be enhanced from Rs. 5,000/- to Rs. 15,000/-."*

The observations recorded in the case of ***Vimal Kanwar Case,*** (Supra) in paragraph Nos.19 and 21, are reproduced as under:-

> *"**19.** The first issue is "whether Provident Fund, Pension and Insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction."*

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The aforesaid issue fell for consideration before this Court in Helen C. Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation & Anr. reported in (1999) 1 SCC 90. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court:

> *"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's*

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> *death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."*

> ***21.*** *The third issue is "whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act" In the case of Sarla Verma & Anr. (Supra), this Court held "generally the actual income of the deceased less income tax should be the starting point for calculating the compensation." This Court further observed that "where the annual income is in taxable range, the word "actual salary" should be read as "actual salary less tax". Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determination of the actual salary. But while deducting income-tax from salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head "salaries" one should keep in mind that under Section 192 (1) of the Income-tax Act, 1961 any person responsible for paying any income chargeable*

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> *under the head "salaries" shall at the time of payment, deduct income-tax on estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as tax deducted at source ('TDS' for short). When the employer fails in default to deduct the TDS from employee salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1A) of the Income-tax Act, 1961.*

Therefore, in case the income of the victim is only from "salary", the presumption would be that the employer under Section 192 (1) of the Income- tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee.

However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income."

9. By noticing the aforementioned law as already laid down by Hon'ble the Apex Court in various judgments and followed by this Court also in the case of **Charanjit and others (supra),** this Court has no hesitation to hold the monthly salary of the deceased namely Sunita Rani as Rs.8,432/- as nothing is required to be deducted from the total salary mentioned in the salary certificate.

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Further, an addition of 50% on the count of 'future prospects' has to be made and total amount of earnings comes to be Rs.8,432/- + Rs.4,216/- (50% of Rs.8,432/-)=Rs.12,648/- per month. Out of the same, keeping in view the number of dependents, 1/3rd is to be deducted on account of 'personal expenses', which is to the extent of Rs.4,216/- and the residue amount works out to be Rs.8,432/- per month and annual comes to be Rs.1,01,184 /-.

Considering the age of the deceased (31 years) as per **Smt. Sarla Verma & Ors. Vs Delhi Transport Corporation & Anr., (2009) 6 SCC 121**, the appropriate multiplier of '16' is required to be applied, instead of '12' and after, so applying this multiplier, the loss of dependency comes to be Rs.1,01,184/- x 16 = Rs.16,18,944/-.

10. Rest of the parameters are assessed and calculated in accordance with the judgment of this Court titled as **Sangtari Muleem v. Karnail Singh, 2024(4) RCR(Civil) 5, 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/- on account of parental consortium.

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11. For the sake of convenience, amount of compensation assessed and calculated by this Court is reproduced here below in a tabular form:

Sr. No.	HEADS	Compensation awarded by the High Court
1.	Income	Rs.8,432 /-per month
2.	Future Prospects	50%
3.	Deduction towards personal expenses	1/3rd
4.	Total Annual Income	Rs.1,01,184/-
5.	Multiplier	16
6.	Loss of Dependency	Rs.16,18,944/-.
7.	Funeral Expenses	Rs.25,000/-
8.	Loss of Estate	Rs.20,000/-
9.	Loss of Spousal Consortium	'nil'
10.	Loss of Parental Consortium	Rs.48,400/-
11.	Loss of filial Consortium	'nil'
12.	Total Compensation to be Paid	Rs.17,12,344/-

12. Thus, keeping in view the aims and object of the beneficial legislation of providing relief to the victims or their families, the total compensation payable to the appellant(s)/claimant(s) is enhanced to **Rs.17,12,344/- (Rupees Seventeen Lacs Twelve Thousand and Three Hundred Forty Four only).**

13. Present appeal has been preferred by the minor son and parents-in-law of the deceased. Since, parents-in-law (appellant Nos. 2

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and 3) could not be said to be dependents of the deceased, therefore, appeal in respect to appellant Nos.2 and 3, are hereby dismissed.

Moreover, the awarded compensation shall be paid to the claimant/appellant No.1-Deepanshu (minor son of the deceased), within a period of three months from the date of this order, along with interest at 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 due to be paid as on date, is not paid within aforementioned stipulated period, same shall be payable to the claimant(s) along with applicable rate of interest @ 9% p.a.

And, in case any further delay is caused beyond six months from today, compensation amount payable as on date would be paid to the claimants along with applicable rate of interest @12% p.a., from the date of filing claim application till its realization.

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.

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

(SANJAY VASHISTH)
JUDGE

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Whether speaking/reasoned ✓ *Yes/~~No~~*
Whether reportable ✓ *Yes/~~No~~*

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