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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1791-2008 (O&M)
Reserved on: 06.08.2024
Pronounced on: 21.08.2024

Usha Rani and Ors. ... Appellants

Versus

Inderjeet and Ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Ramphal Kaushik, Advocate for

Mr. Amit Kumar Jian, Advocate for the appellants.

Mr. Sanjeev Pabbi, Advocate
forUnited Insurance Co. Ltd.

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HARKESH MANUJA, J.

1. The present appeal lays challenge to an award dated 06.10.2007 passed by the learned Motor Accident Claims Tribunal, Jind (in brevity, “the Tribunal”), whereby compensation of Rs.4,41,500/- was awarded to the appellants/claimants along with interest @ 7.5% per annum.

2. The appellants/claimants being dependents of deceased, filed claim petition before the Tribunal praying for grant of compensation to the tune of Rs.25,00,000/- along with the interest @ 15% per annum on account of death of Satish Kumar in a vehicular accident which took place on 14.06.2003 while alleging rash and negligent driving of respondent No.1-driver.

3. Learned Tribunal held that the accident in question occurred due to rash and negligent driving of respondent No.1/ driver and after assessing income of the deceased while working as auto driver at Rs.6,000/- per month and deducting Rs.3,000/- as auto rickshaw rent and Rs.1,000/- towards personal expenses, awarded compensation in the following manner:-

S.No	Heads of Claim	Amount (in Rs)
1.	Loss of dependency	Rs. 4,32,000/-
2.	Funeral Charges	Rs. 2,000/-
3.	Loss of consortium (qua petitioner no. 1)	Rs. 5,000/-
4.	Loss of Estate	Rs. 25,00/-
	Total	Rs.4,41,500/-

4. Being aggrieved against the award dated 06.10.2007, the present appeal has been preferred by the appellants/claimants for enhancement of compensation. Facts as specified in the claim petition and the issue regarding negligence of the driver been recorded in favour of appellants/claimants by the Tribunal, therefore, for the sake of brevity, those are not being repeated here.

5. Learned counsel for the appellants/claimants assailed the award while submitting that earning of the deceased, was to the tune of Rs. 12,000/-per month as he was regularly plying auto rickshaw. It was further submitted that the above fact was not rebutted by the respondents by leading any evidence and therefore, Ld. Tribunal wrongly assessed monthly income as Rs.2,000/- only after deducting rent and self expenses and the same was thus liable to be enhanced. Furthermore, he submitted that deduction of 1/3rd from the income of the deceased as his personal

expenses was also on the higher side as the entire family was totally dependent upon him. He also submits that even the loss of consortium was not granted to the family as per the verdict in the case of "***United India Insurance Co. V. Satinder Kaur @ Satwinder Kaur & others***", (2021) 11 SCC 780. He concluded his arguments by submitting that compensation granted under other heads was also on the lower side.

6. On the other hand, learned counsel representing the respondent-insurance company submitted that there was no basis to assess the income of the deceased as Rs. 12,000/- per month as no evidence except the bare testimonies of PW-7 namely Tara Chand and PW-9 namely Usha Rani was available before the Tribunal in support. He thus submits that the Tribunal, therefore, rightly assessed his income on the basis of the income schedule prepared by the State Legal Services Authority or as per Workmen's Compensation Act. He further pointed out that the learned Tribunal rightly deducted $1/3^{rd}$ as personal expenses. Learned counsel further submitted that in the facts and circumstances of the case, appellants-claimants were adequately compensated and thus the present appeal was liable to be dismissed.

7. I have heard learned counsel for the parties and perused paper-book of the case. I find force in the arguments advanced by learned counsel for the appellants/claimants.

8. In the present case, Usha Rani (wife of the deceased) while deposing as PW-9 stated on her affidavit that deceased was working as an auto driver and earning Rs.12,000/- per month, although no documentary evidence to support the same was placed before the learned Tribunal in this regard. Learned Tribunal assessed the monthly income of deceased

considering that he was plying auto rickshaw and must be earning Rs. 6,000/- per month. In such circumstances, though the deceased was working in an un-organized sector yet earning his livelihood on the basis of his driving skills being an expert and thus, minimum wages could not be taken as an absolute criterion to assess his monthly income even though no documentary evidence regarding the same was available. It was held by Hon'ble Apex Court in "**Zakir Hussein vs. Sabir and others**" reported as **2015(2) RCR(Civil) 141** that notification of minimum wages is only a yardstick for assessing the income of the person but it is not an absolute factor to be taken into consideration, as at times it fails to meet the requirements that are needed to maintain the basic quality of life. Relevant para from this judgment is reproduced hereunder:

> *"14. We have carefully examined the facts of the case and material evidence on record in the light of the rival legal contentions urged before us by both the learned counsel on behalf of the parties to find out as to whether the appellant is entitled for further enhancement of compensation? We have perused the impugned judgment and order of the High Court and the award of the Tribunal. After careful examination of the facts and legal evidence on record, it is not in dispute that the appellant was working as a driver at the time of the accident and no doubt, he could be earning L 4,500/- per month. As per the notification issued by the State Government of Madhya Pradesh under Section 3 of the Minimum Wages Act, 1948, a person employed as a driver earns L 128/- per day, however the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage, as per State Government Notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index. Therefore, we are of the view that it would be just and reasonable to consider the appellant's daily wage at L 150/- per day (L 4,500/- per month i.e. L 54,000/- per annum) as he was a driver of the motor vehicle which is a skilled job. Further, the Tribunal has wrongly determined the loss of income during the course of his treatment at L 51,000/- for a period of one year and five months. We have to enhance the same to L 76,500/- (L 4,500 X 17 months)."*

9. In **"Kubrabibi v. Oriental Insurance Co. Ltd."**, reported as 2023(3) Apex Court Judgments (SC) 23, Hon'ble Apex Court held that in the absence of definite proof of the income, the social status of the deceased is to be kept in perspective where such persons are employed in unorganized sector. Relevant para from this judgment is reproduced here under:

> *"7. In a matter of the present nature where the compensation is sought and even in the absence of definite proof of the income, the social status of the deceased is to be kept in perspective where such persons are employed in unorganized sector and the notional income in any event is required to be taken into consideration. The fact that the deceased had three dependents to be cared for and had claimed that he was working as a mechanic, the amount payable to an unskilled labour, cannot be the basis and in that circumstance when he was a skilled person, the daily income at Rs.200/- per day in any event could have been taken even if the income from jeep transport business was discarded for want of documents. More so in a circumstance, where the MACT had referred to the evidence available on record and then arrived at its conclusion, the re-appreciation of evidence by the High Court is without being sensitive to nature of lis before it."*

10. Learned Tribunal rejected the claim of claimants/appellants regarding the income of the deceased by observing that in the absence of any cogent documentary evidence regarding his salary, it cannot be held to be conclusively proved merely on the basis of deposition of witnesses. However, learned Tribunal, while doing so, failed to consider that Motor Vehicles Act, 1988 being a beneficial piece of legislation, strict rules of evidence as applicable in a civil or criminal trial, are not to be enforced in motor accident compensation cases. Reliance in this regard can be placed upon the judgment of Hon'ble Apex Court in **"Rajwati @ Rajjo v. United India Insurance Company Ltd."**, reported as 2023(3) Apex Court Judgments (SC) 684, relevant paras from which are reproduced hereunder:

"18. Similarly, in the case of Kusum Lata &Ors. v. Satbir &Ors. (2011) 3 SCC 646, this Court observed that it is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

19. It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in Sunita (Supra) and Kusum Lata (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, "the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases"

11. In the present case, wife of the deceased Usha Rani while deposing as PW-9stated on affidavit that her husband was working as an auto driver and used to earn Rs. 400/- per day which comes out to be Rs. 12,000/- per month. It cannot be denied that apart from maintaining his family including two minor children, he was also taking care of his old age parents being the only bread winner of his family. In such circumstances, assessing the income of the deceased as Rs. 6,000/- per month solely on the basis of assumption and without giving any reason in support would not be appropriate. Even the salary as Rs.12,000/- as claimed by his wife is not completely taken into consideration, in the given facts it would be appropriate in case the income of the deceased is assessed as Rs. 8,000/- per month when he was working as an auto driver. Importantly, the Tribunal went wrong while making deductions towards rent of auto-rickshaw as the same stood accounted for while assessing income and the carry home amount by the deceased.

12. Further it was argued that deduction towards personal expenses as 1/3rd of the income was on higher side, however, it seems

reasonable and justified in view of ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, wherein it was held that in case the number of dependent family members were 4 to 6, 1/4th would be deducted as personal expenses from the total income. Relevant para of the judgment is culled out as under:-

> *"**30.** Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."*

13. Furthermore, in view of judgment of the Hon'ble Apex Court in ***Smt.Sarla Verma's*** *case (supra)*, ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, and ***Satwinder Kaur's*** case (supra) compensation awarded under conventional heads is also required to be reassessed. Claimants are held entitled to Rs.18,000/- as compensation under the head of funeral expenses and Rs.18,000/- towards loss of estate by applying 10% increase under the conventional heads. Loss of consortium is to be awarded to the tune of Rs.48,000/- x 5 (Rs.2,40,000)as appellants/claimants being spouse, children and parents of deceased are also entitled for spousal and parental consortium; but simultaneously, appellants/claimants are not entitled for compensation on account of loss of love and affection. Even learned counsel for respondent No 3 - Insurance Company is not in a position to deny that the future prospect should have been awarded @40% as the age of deceased was 25 years.

14. In view of the discussion made above, the appellants/claimants shall be entitled for the grant of following compensation:-

Sr.No.	***Nature***	***Amount in Rupees***
1.	*Annual Income of deceased*	*Rs.96,000/-*
2.	*Add 40% of Future prospects*	*Rs.38,400/-*
3	*Total Income (Rs.96,000/- + Rs.38,400)*	*Rs1,34,400 /-*
4.	*Deduction (1/4)*	*Rs.33,600/-*
5.	*Loss of Income after applying multiplier of 18 as per age of 25 years(Rs.1,00,800/- X 18)*	*Rs.18,14,400/-*
6.	*Funeral Expenses*	*Rs.18,000/-*
7.	*Loss of Consortium (Rs.48000x5)*	*Rs.2,40,000/-*
8.	*Loss of Estate*	*Rs.18,000/-*
	Total Compensation	*Rs.20,90,400/-*
	Amount Awarded by the Tribunal	*Rs.4,41,500/-*
	Enhanced Amount	*Rs.16,48,900/-*

15. The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in ***Smt. Supe Dei and others Vs. National Insurance Company Limited and other***, (2009) (4) SCC 513 approved in a subsequent judgment titled as ***Puttamma and others Vs. K.L. Narayana Reddy and another***, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

16. Disposed off in the above terms.

17. Pending miscellaneous application(s), if any, shall also stand disposed of.

21.08.2024 **(HARKESH MANUJA)**

Tejwinder **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*