IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

398 **FAO No.333 of 2008 &**
XOBJC-11-CII-2009
Date of Decision : 26.02.2024

Mamo and Others .....Appellants

VERSUS

Krishan Kumar and Another ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

None for respondent No.1/Cross-objector.

Mr. Neeraj Khanna, Advocate for respondent No.2.

<u>ALKA SARIN, J.</u> (Oral)

1. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as the 'Tribunal') vide award dated 18.10.2007. Cross-objections being XOBJC-11-CII-2009 have also been filed by the owner and driver of the offending vehicle as the recovery rights were given to the Insurance Company on the ground that the driver was plying a taxi, however, he was holding a licence for LMV. The Tribunal held that since the driver was driving a taxi, endorsement for transport vehicle would be required.

2. 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.

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

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.3,900/-
2	Annual income	[Rs.3,900 x 12] = Rs.46,800/-
3	Deduction 1/3rd	[Rs.46,800 – 15,600] = Rs.31,200/-
4	Multiplier of 11	[Rs.31,200 x 11] = Rs.3,43,200/-
5	Funeral and last rites	Rs.6,800/-
6	Loss of consortium	Rs.5,000/-
	Total Compensation	**Rs.3,55,000/-**
	Interest	**10% per annum**

4. Learned counsel for the claimant-appellants would contend that the deceased in the present case, as per the postmortem report, was 45 years of age. However, the Tribunal has assessed the age of the deceased as 50 years. It is further the contention that the Insurance Company had themselves produced on record the salary certificate of the deceased as Ex.R1, who was an employee of Verka Milk Plant, Mohali. As per the salary certificate (Ex.R1) the deceased was getting a salary of Rs.8,401/- per month. The Tribunal after deducting the installments being paid towards loans, PF and others, assessed the carry home salary of the deceased as Rs.3,799/ and assessed the monthly income of the deceased as Rs.3,900/-. Learned counsel for the claimant-appellants has contended that the deduction on account of loans etc. cannot be deducted from the salary of the deceased while assessing the amount of compensation payable to the claimant-appellants. It is further the contention that though a deduction of 1/3rd has rightly been applied however, no addition has been made towards

loss of future prospects and as per the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]** the deceased, who was an employee of Verka Milk Plant, Mohali, would be entitled to an addition of 30% towards loss of future prospects. A multiplier of 11 has been applied by the Tribunal, however, keeping in view the age of the deceased, which was 45 years as per the postmortem report, a multiplier of 14 ought to have been applied. Even the amount awarded under the conventional heads is also on the lower side and only an amount of Rs.5,000/- has been awarded towards loss of consortium, which is also not in accordance with the law. In support of his contentions the learned counsel for the claimant-appellants has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]; Pranay Sethi** (supra), **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]**.

5. *Per contra* learned counsel for respondent No.2-Insurance Company has contended that the income of the deceased has rightly been assessed as Rs.3,900/- per month. It is further the contention that no evidence was led by the claimant-appellants regarding the salary of the deceased. Learned counsel for respondent No.2-Insurance Company has further contended that very high component of interest has been awarded by the Tribunal. It has further been stated that there is no scope of any further enhancement.

6. I have heard learned counsel for the parties.

7. There is no evidence in the present case regarding the age of the deceased. However, as per postmortem report the deceased was 45 years of age and hence the age of the deceased at the time of accident is taken to be 45 years. The salary certificate (Ex.R1) of the deceased has come in evidence which shows that the total salary of the deceased at the time of accident was Rs.8,401/- per month. The Tribunal while assessing the salary of the deceased as Rs.3,900/- per month applied deductions on account of PF and income tax loan etc. The said deductions cannot be permitted. The income of the deceased is hence assessed as Rs.8,401/- per month. The deduction of 1/3rd has rightly been applied, however, no addition has been made towards loss of future prospects which ought to have been 30% keeping in view the age of the deceased as per postmortem report as 45 years and the fact that he was working in Verka Milk Plant, Mohali and a multiplier of 14 would be applicable. The amount awarded under the conventional heads as well as under the head 'loss of consortium' is also not in accordance with the law. Under the conventional heads, the claimant-appellants 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 as per the law laid down in the cases of **Pranay Sethi** (*supra*) and **N. Jayasree** *(supra)*. The claimant-appellants would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium i.e. spousal and parental.

8. Since the compensation is being re-worked, the interest, which is exceptionally on the higher side, is reduced to 7.5% per annum.

9. Accordingly, the reworked compensation is as under :

Sr. No.	Head	Compensation Awarded
1.	Monthly Income	Rs.8,401/-
2.	Annual Income	[Rs.8,401x12] = Rs.1,00,812/-
3.	Deduction 1/3rd	[Rs.1,00,812-33,604] = Rs.67,208/-
4.	Future Prospects - 30%	[Rs.67,208+20,163] = Rs.87,371/-
5.	Multiplier - 14	[Rs.87,371x14] = Rs.12,23,194/-
6.	Loss of estate	Rs.18,000/-
7.	Funeral expenses	Rs.18,000/-
8.	Loss of consortium (i) Parental (ii) Spousal's	 Rs.48,000/-x2 = Rs.96,000/- Rs.48,000/- Total Rs.1,44,000/-
	Total Compensation	**Rs.14,03,194/-**

10. 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 claimant-appellants as directed by the Tribunal.

XOBJC-11-CII-2009

11. On the previous dates none had put in appearance on behalf of respondent No.1/cross-objector. Even today, none has put in appearance on behalf of respondent No.1/cross-objector. In view thereof, this Court is left with no other option but to dismiss the present cross-objections for non-prosecution.

12. In view of the above discussion, the appeal being FAO-333-2008 filed by the claimants is allowed and the award passed by the Tribunal

is modified accordingly while the cross-objections being XOBJC-11-CII-2009 filed by respondent No.1 are dismissed for non-prosecution. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

26.02.2024
jk

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