

Asruddin and Others

..... Appellants

Versus

Kabir and Others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.K. Bawa, Advocate for the appellants.

None for respondent Nos.1 and 2.

Mr. Assem Aggarwal, Advocate for respondent No.3.

ALKA SARIN, J. (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, Gurgaon vide award dated 20.04.2009.
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.2,400/-
2	Annual income	[Rs.2,400 x 12] = Rs.28,800/-
3	Deduction 1/3rd	[Rs.28,800 - 9,600] = Rs.19,200/-
4	Multiplier of 15	[Rs.19,200 x 15] = Rs.2,88,000/-
5	Last rites	Rs.5,000/-
6	Loss of consortium	Rs.5,000/-
7	Total Compensation	Rs.2,98,000/-
	Interest	9% per annum

4. Learned counsel for the claimant-appellants would contend that the deceased in the present case was 20 years of age and the accident took place on 17.04.2007 and the deceased succumbed to his injuries on 18.04.2007. A child was born after his death on 14.10.2007. It is further the contention of the learned counsel that the income of the deceased has wrongly been assessed as Rs.2,400/- per month as the minimum wage of an unskilled worker prevailing at the time of the accident was Rs.2,553/- per month. It is further the contention of the learned counsel that deduction of 1/3rd has wrongly been applied by the Tribunal, whereas it ought to have been 1/4th since the child was born after his death on 14.10.2007. It is further argued that a multiplier of 15 was wrongly applied, whereas it should have been 18 keeping in view the age of the deceased being 20 years. It is further the contention of the learned counsel that no amount has been awarded towards future prospects and that the amount awarded under the conventional heads as well as under the head loss of consortium is also not in accordance with the law laid down by the Hon'ble Supreme Court. 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]**, **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]**.

5. None has been putting in appearance on behalf of respondent Nos.1 and 2 despite service.

6. *Per contra*, the learned counsel for respondent No.3-Insurance Company has vehemently argued that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

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

8. In the present case, the Tribunal has assessed the income of the deceased as Rs.2,400/- per month, however, the minimum wage of an unskilled worker prevailing at the time of the accident was Rs.2,553/- per month and hence the income of the deceased is assessed as Rs.2,553/- per month. The Tribunal has also wrongly applied a deduction of 1/3rd whereas it ought to have been 1/4th inasmuch as the child was born on 14.10.2007. The Birth Certificate of the child has been appended as Annexure P-5 vide CM No.10771-CII of 2010. Further, the deceased was 20 years of age at the time of the accident and the Tribunal has wrongly applied a multiplier of 15 which ought to have been 18 as per the law laid down by the Hon'ble Supreme Court in the case of **Sarla Verma** (supra). Further, no amount has been awarded towards future prospects and hence as per the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), 40% addition is made towards future prospects. Further, the amount awarded under the conventional heads and under the head loss of consortium are not 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) and hence 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 and the claimant-appellants would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium.

9. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.2,553/-
2	Annual income	[Rs.2,553 x 12] = Rs.30,636/-
3	Deduction 1/4th	[Rs.30,636 - 7,659] = Rs.22,977/-
4.	Future prospects @ 40%	[Rs.22,977+ 9,191] = Rs.32,168/-
5	Multiplier 18	(Rs.32,168 x 18) = Rs.5,79,024/-
6	Loss of estate	(Rs.15,000+20% increase) Rs.18,000/-
7	Funeral expenses	(Rs.15,000+20% increase) Rs.18,000/-
8	Loss of Consortium : (i) Parental (ii) Filial (iii) Spousal	Rs.48,000/- Rs.96,000/- (48,000 x 2) Rs.48,000/- (Total Rs.1,92,000/-)
9	Total Compensation	Rs.8,07,024/-
10	Amount Awarded by the Tribunal	Rs.2,98,000/-
	Enhanced amount	Rs.5,09,024/-

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.

11. 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.

30.01.2024
D.Bansal

(ALKA SARIN)
JUDGE

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