112

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2406-2010 (O&M)
Date of decision: 18.09.2024

Suman and others ...Appellants

Versus

Pawan Kumar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Mayank Gupta, Advocate for
Mr. Rajeev Mangla, Advocate for the appellants.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company.

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VIKAS BAHL, J. (ORAL)

1. The widow, two minor children and mother of the deceased-Ugarsain have filed the present appeal for modification of the award dated 08.12.2009 passed by the Motor Accident Claims Tribunal (Fast Track Court), Hisar (hereinafter to be referred as “the Tribunal”) and are seeking enhancement of the compensation awarded by the Tribunal.

2. The only issue in the present appeal is as to what is the amount of compensation to which the claimants/appellants are entitled to on account of death of Ugarsain, as there is no dispute with respect to the fact that the said Ugarsain had died in a road accident which occurred on 03.05.2008 involving a vehicle which was being driven by respondent No.1 and was owned by respondent No.2 and was insured by respondent No.3-Insurance Company. The Tribunal had awarded an amount of compensation to the tune

of Rs.3,76,412/- along with interest at the rate of 7% per annum.

3. Learned counsel for the appellants has submitted that no amount on account of loss of estate and funeral expenses had been awarded by the Tribunal to the present appellants/claimants whereas an amount of Rs.18,000/- on each of the said two accounts was required to be awarded to the claimants/present appellants. It is further submitted that nothing on account of future prospects had been granted by the Tribunal whereas 40% of the salary was required to be taken into consideration for the purpose of future prospects. It is argued that even the income of the deceased which had been taken as Rs.3000/- per month by the Tribunal is highly inadequate inasmuch as the income of the deceased was Rs.20,000/- per month. On the said aspect, learned counsel for the appellants has submitted that it had come in the oral evidence that the deceased was running a shop i.e. Guru Jambeshwar Medical Store which was situated in front of Vidyut Nagar, Hisar and he used to earn Rs.20,000/- per month by running the said medical store. It is further submitted that the present appellants had also produced on record the certificate Ex.P63 (at page 399 of the record of the Tribunal) in order to show that the deceased had a licence of Pharmacist dated 22.05.1995 which was in operation and thus, it could not be said that the deceased was only to be paid daily wages as had been observed by the Tribunal. Specific reference has also been made to the evidence of PW5 who is the widow of the deceased. It is further submitted that the interest at the rate of 9% per annum be also awarded on the enhanced amount from the date of filing of the claim petition till its realisation. In support of his arguments, learned counsel for the appellants has relied upon the law laid down by the Hon'ble Supreme

Court in cases titled as ***Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another*** reported as ***(2009) 6 SCC 121***, ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported as ***(2017) 16 SCC 680***, and ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others*** reported as ***(2018) 18 SCC 130***. Learned counsel for the appellants has also relied upon the ***judgment dated 05.03.2024*** passed by the Coordinate Bench of this Court in ***FAO-3470-2021 titled as National Insurance Company Limited Vs. Subodh Kant and others and other connected case***.

4. Learned counsel for respondent No.3-Insurance Company, on the other hand, has opposed the present appeal, more so on the ground of enhancement sought on account of increase in income. It is submitted that the income of the deceased at Rs.3000/- per month had been rightly assessed by the Tribunal as there was no documentary evidence in support of the fact that the deceased was running Guru Jambeshwar Medical Store. It is further submitted that in the said circumstances, the income of the deceased at best can be taken to be that of a daily wagers which at the relevant time was Rs.3000/- per month. Learned counsel for the Insurance Company has further submitted that the interest which is being sought by the present appellants is also highly excessive and at best, the rate of interest which is to be granted in case of enhancement is 6% per annum.

5. Learned counsel for the appellants, on the basis of objections raised by learned counsel for respondent No.3-Insurance Company, has fairly submitted that at least, an amount of Rs.7000/- per month is to be taken as the salary of the deceased in view of the law laid down in the case of ***Subodh***

Kant and others (Supra) and after taking into consideration all the factors and has accordingly, submitted a revised chart. Relevant portion of which is reproduced hereinbelow:-

"FAO No.2406 of 2010
Appellant herein: Claimant(s)
Date of Accident: 03.05.2008
Nature of case: Death
Age of deceased/injured: 38

DETAILS OF RELIEF GRANTED/CLAIMED

Details	***Before the Tribunal***	***Compensation claimed as per judgments of Sarla Verma, Pranay Sethi & Magma General Insurance***
Income	*Monthly: Rs.3000/-* *Annual: Rs.15,000/-*	*Monthly: Rs.7000/-* *Annual: Rs.84,000/-*
Deduction	*--*	*1/4th*
Future Prospects	*--*	*40%*
Multiplier	*15*	*15*
Loss of estate	*--*	*Rs.18,000/-*
Funeral expenses	*--*	*Rs.18,000/-*
Loss of consortium	*Parental-* *Filial- Rs.10,000/-* *Spousal-*	*Rs.1,92,000/-*
Medical	*Rs.1,41,412/-*	*Rs.1,41,412/-*
Total compensation	*Rs.3,76,412/-*	*Rs.16,92,412/-*
Interest	*7%*	*9%*

Dated: 18.09.2024 Sd/- Name and Signature of Advocate with P.No.
Mayank Gupta
P-2823/18"

6. This Court has heard learned counsel for the parties and has perused the paper book and has also considered the said revised chart and the

same has been found to be in accordance with law except with respect to the interest part.

7. Hon'ble the Supreme Court in para 42 of ***Sarla Verma's case*** (Supra) had observed as under:-

> *"We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years,* ***M-15 for 36 to 40 years,*** *M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

8. A perusal of the above would show that for the age of 38 years, multiplier of 15 is to be applied.

9. The Hon'ble Supreme Court in ***Pranay Sethi's case*** (Supra), has held as under:-

> *"59.In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *59.1 The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *59.2 As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
>
> *59.3 While determining the income, an addition of 50% of*

actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. *An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*

59.5 For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6 The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

60. The reference is answered accordingly. Matters be placed before the appropriate Bench."

10. A perusal of the above judgment would show that it was

observed by the Hon'ble Supreme Court that addition of some percentage of the actual salary to the income of the deceased towards future prospects was also required to be taken into consideration and the said percentage was specifically defined with respect to persons who were having a permanent job or/were self-employed or on a fixed salary. The chart as reproduced in para 42 of the judgment of ***Sarla Verma's case*** (Supra) was approved and a total amount of Rs.70,000/- on conventional heads namely loss of estate, loss of consortium or funeral expenses was also mentioned which required to be enhanced at the rate of 10% in every three years.

11. The Hon'ble Supreme Court in ***Magma General Insurance Company Limited's case (Supra)*** had further observed that in death case, under the head of loss of consortium, the parents of the deceased are entitled to be awarded loss of consortium under the head of filial consortium, children are entitled to parental consortium. To the widow, spousal consortium is to be given. Relevant portion of the said judgment is reproduced hereinbelow:-

> *"21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*
>
> *21.1 Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows*

compensation to the surviving spouse for loss of "company, society,co-operation, affection, and aid of the other in every conjugal relation."

21.2 Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

21.3 Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count 5. However, there was no clarity with respect to the principles on *which compensation could be awarded on loss of Filial Consortium.*

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra). In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium."

12. In the abovesaid judgment, an amount of Rs.40,000/- each was awarded to the father and sister of the deceased and thus, the amount of consortium awarded was made dependent upon the number of claimants/legal representatives.

13. In the present case, an amount of Rs.18,000/- on account of loss of estate and also the same amount on account of funeral expenses is required to be paid to the claimants in view of the law laid down in the abovesaid judgments and same had not been granted by the Tribunal and thus, the claimants/present appellants are entitled to an amount of Rs.36,000/- on the said two accounts and the said entries have been rightly made in the abovesaid revised chart. The benefit of 40% on future prospects is also required to be given to the claimants and the said fact has also been rightly mentioned in the said revised chart. With respect to the rate of interest, this Court is consistently awarding the rate of interest at the rate of 7.5% per annum, which is also reasonable in the present case. The only issue which requires consideration is what was the income of the deceased in the present facts and circumstances of the case.

14. Learned counsel for the appellants has relied upon the law laid down in the case of ***Subodh Kant and others*** (Supra) in order to show that in

a case where it was averred that the deceased was running a Pharmacy shop, he was awarded an amount of Rs.20,000/- per month with respect to the accident which had taken place in the year 2014 (as stated by learned counsel for the appellants who was the counsel in the said case also). In the said case, the income which had been taken by the Motor Accident Claims Tribunal was Rs.9518.49 per month which as per the counsel for the appellants therein was on the basis of minimum wages. A perusal of the said judgment would show that it was noticed by the Coordinate Bench of this Court that the claimants had not produced any documentary evidence to prove the income of the deceased except the oral evidence, although, the licence issued by the authorities with respect to the pharmacy shop was produced by the authorities and in the said circumstances, an amount of Rs.20,000/- was found to be appropriate. Paras, 13, 14 and 15 of the said judgment are reproduced hereinbelow:-

> *"13. The learned counsel representing the claimant submits that the Tribunal has erred in assessing his income at par with a skilled worker i.e. Rs.9518.49 per month particularly when the claimant was running a pharmacy in the area of Gurugram.* ***The appellant has produced the licence issued by the authorities permitting the claimant to open the pharmacy*** *shop which is owned by his father.*
>
> *14. In these circumstances, the income assessed by the Tribunal is not appropriate. The claimant is residing in the area of* ***District Gurugram*** *which abuts the National Capital Region Delhi. Undoubtedly, he was running his pharmacy in Pataudi, which is a sub-division of District Gurugram.* ***However, the claimants have not brought any documentary evidence to prove their income except the oral evidence.***

15. Considering the facts of the case, this court is required to use the Thumb Rule in assessing the income of the claimant. ***Hence, the income of the claimant is conservatively assessed at Rs.20,000/- per month.*** *Accordingly, the loss of the income of the claimant is assessed at Rs.12,800/- per month. On account of future prospects, his income will be increased by 40%."*

15. In the present case, a perusal of evidence of PW5 (at page 87 of the record of the Tribunal) would show that PW5 in her examination-in-chief, had specifically stated that on 03.05.2008, the deceased was going driving the motorcycle from his shop i.e., Guru Jambeshwar Medical Store situated in front of Vidyut Nagar, Hisar to his village and had further stated that the deceased was a hard working man and used to earn Rs.20,000/- per month by running the medical store and by sale and purchase of the properties and that income of the deceased would have increased significantly with the passage of time. In the cross-examination, only suggestion which was put to the said witness was as to whether the deceased was a partner in the medical hall or not and as to whether he was proprietor of the medical hall, to which the witness had answered that the deceased was not a partner but the proprietor of the medical hall. From the evidence in chief as well as cross-examination of the abovesaid witness, it is prima facie established that the deceased was running a shop i.e. Guru Jambeshwar Medical Store and no specific suggestion to the effect that he was not running the said shop had been made in the said cross-examination. In addition to the same, Ex.P63 (at page 399 of the record of the Tribunal) is a licence issued by the Haryana State Pharmacy Council dated 22.05.1995 in favour of the deceased, which also prima facie shows that he was a certified

pharmacist. In the said circumstances, the judgment relied upon by the learned counsel for the appellants would be relevant for consideration in the present case. However, since, it has been fairly stated by learned counsel for the appellants that accident in the said case had occurred in the year 2014 whereas accident in the present case had taken place on 03.05.2008 and also the fact that pharmacy in the abovesaid case was in District Gurugram whereas the shop in the present case is situated in District Hisar, this Court is of the opinion that an amount of Rs.7000/- per month as mentioned in the revised chart to be taken as income of the deceased is reasonable in the facts and circumstances of the present case. Accordingly, the income of the deceased is taken to be Rs.7000/- per month in the abovesaid facts and circumstances.

16. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and award dated 08.12.2009 is modified and respondent No.3-Insurance Company is directed to pay an additional amount of compensation to the tune of Rs.13,16,000/- to the appellants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation within a period of six weeks from today.

17. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

18.09.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**