

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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FAO-5770-2010 (O&M)
Date of Decision : 08.01.2024

SEWA RANI & ORS.

.... Appellants

VERSUS

GURWARYAM SINGH & ORS.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Tanya Trehan, Advocate for
Mr. Sandeep Khunger, Advocate for the appellants.

Mr. Nigam K. Bhardwaj, Advocate
for respondent No.3-Insurance Company.

ALKA SARIN, J. (ORAL)

CM-23523-CII-2023

This is an application for impleading the legal representatives
of applicant-appellant No.1, namely, Sewa Rani.

For the reasons stated in the application, the same is allowed.
Legal representatives of applicant-appellant No.1 (as mentioned in para No.3
of the application), who are already appellants No.2 to 4, are ordered to be
impleaded as such.

Vakalatnama signed by the legal representatives of applicant-
appellant No.1 has already been appended with the application. Amended
memo of parties is taken on record. Registry to scan and tag the same at an
appropriate place.

With no objection from both the counsel, main appeal is taken
on Board today itself.

FAO-5770-2010

1. The present appeal has been filed by the claimants challenging the award dated 06.04.2010 passed by the Motor Accident Claims Tribunal, Ferozepur (hereinafter referred to as ‘the Tribunal’) and against the quantum of compensation awarded.
2. Since the facts, as recorded in the impugned award passed by the Tribunal are not disputed, the same are not being reproduced herein for the sake of brevity.
3. The Tribunal in the present case has assessed the income of the deceased, namely, Jetha Ram, as Rs.20,718/- per month and after deducting income tax the same was assessed as Rs.14,924/- per month and had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly dependency of the claimants	Rs.12,000/-
2	Annual dependency	[12,000/- x 12] = Rs.1,44,000/-
3	Multiplier of 7	[1,44,000 x 7] = Rs.10,08,000 /-
4	Funeral expenses	Rs.10,000/-
	Total Compensation	Rs.10,18,000/-
	Share of compensation of the claimants (60% of the total compensation)	Rs.6,10,800/-
	Interest	7% per annum from the date of filing of the petition till realization.

4. Learned counsel for the appellants would contend that there is no contributory negligence made out in the present case and that the findings recorded on issues No.1 and 5 are erroneous inasmuch as there was no evidence on the record to even remotely suggest that there was an element of

contributory negligence in the present case. Learned counsel for the appellants further contends that the compensation awarded is not in consonance with the law laid down by 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. *Per contra* learned counsel for respondent No.3-Insurance Company has contended that sufficient amount has been awarded as compensation and that it was a clear case of a contributory negligence as it was a head-on collision.

6. I have heard learned counsel for the parties.

7. In the present case while allowing the claim petition it has been held that the deceased, namely, Jetha Ram, was also responsible for causing the accident and hence the claimants were held entitled to compensation to the extent of 60% out of the total amount of compensation. The Tribunal while dealing with the issue of contributory negligence has held that there was no evidence on record to suggest that it was a case of contributory negligence and that there was no evidence on record from which it could be pointed out that which driver was at fault and has still gone ahead and held that there was an element of contributory negligence on the part of the deceased. The Motor Vehicles Act is a beneficial piece of legislation and in

the given case where there is no evidence, it cannot be presumed against the claimants that the deceased was responsible in any manner for causing the accident. In the absence of any evidence in the present case it cannot be held that it was a case of contributory negligence. Hence, the finding of the Tribunal qua the contributory negligence is set aside.

8. In view of the law laid down by the Hon'ble Supreme Court in of *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]* (supra), *National Insurance Company Ltd. vs. Pranay Sethi & Ors. [supra]*; *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [supra]* and *N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [supra]*, the claimants would be entitled to future prospects @ 15%, the multiplier applied by the tribunal is erroneous, the same ought to have been 11. Further, the claimants would also be entitled to the amounts under the conventional heads and under the head of “loss of consortium”. The amount of compensation to which the claimant-appellants are held entitled to is re-calculated as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly dependency	Rs.14,924/-
2	Annual dependency	[14,924 x 12] = Rs.1,79,088/-
3	1/3 Deduction	[1,79,088 - 59,696] = Rs.1,19,392/-
4	Future prospects @ 15%	[1,19,392 + 17,909] = Rs.1,37,301/-
5	Multiplier of 11	[1,37,301 x 11] = Rs.15,10,311/-
6	Funeral expenses	Rs.18,000/-
7	Loss of Estate	Rs.18,000/-
8	Loss of Consortium : (i) Parental	Rs.1,44,000/- (48,000 x 3)
9	Total Compensation	Rs.16,90,311/- (Round figure Rs.16,90,300/-)

9. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7% per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned as directed by the Tribunal.

10. In view of the above, the appeal filed by the claimants stands allowed and the impugned award is modified to the extent stated above. Pending applications, if any, also stand disposed off.

08.01.2024

Aman Jain

(ALKA SARIN)

JUDGE

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