IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

659 **FAO-3653-2012 (O&M)**
Date of decision : 05.03.2024

Koshalya & Another ... Appellants(s)

Versus

Ghanshyam & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep K. Sharma, Advocate for
Mr. Gurinder Pal Singh, Advocate for the appellants.

Mr. Rampal Kohli, Advocate for
Mr. Tajinder K. Joshi, Advocate for respondent No.3.

ALKA SARIN, J. (ORAL)

CM-15710-CII-2012

This is an application for condonation of delay of 9 days in filing the appeal.

For the reasons stated in the application, delay of 9 days in filing the appeal is condoned. CM stands disposed off.

FAO-3653-2012

1. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Rewari vide award dated 01.09.2011.

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.4,800/-
2	Annual Income	[Rs.4,800x12] = Rs.57,600/-
3	Deduction 1/3rd	[Rs.57,600-19,200] = Rs.38,400/-
4	Multiplier - 15	[Rs.38,400x15] = Rs.5,76,000/-
5	Funeral expenses	Rs.10,000/-
6	Total Compensation	**Rs.5,86,000/-**
	Interest	**6% per annum**

4. Learned counsel for the claimant-appellants would contend that the wife of the deceased had stepped into the witness box and stated that the deceased was earning Rs.20,000/- per month. The learned counsel would further contend that the statement of the wife ought to have been believed and the income of the deceased ought to have been assessed as Rs.20,000/- per month instead of Rs.4,800/- per month. It is further the contention of the learned counsel that though multiplier of '15' as well as deduction of 1/3rd was applied correctly, however, no addition has been made towards future prospects which ought to have been 40%. It is further the contention of the learned counsel 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 contention he has relied upon the judgments of the Hon'ble Supreme Court in the cases of **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*, 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.

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

7. In the present case, the argument of the learned counsel for the claimant-appellants that the income of the deceased ought to have been assessed as Rs.20,000/- per month cannot be accepted in the absence of any documentary proof. However, it has come on the record that the deceased was owner of two trucks and possibly he could have been driving one of the trucks himself. The minimum wage of a skilled worker prevailing at the time of the accident i.e. in the year 2010 was Rs.4,738/- per month and the income of the deceased has been assessed by the Tribunal as Rs.4,800/- per month. The Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav [2021 (4) RCR (Civil) 492]** has held as under :

> *10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such licence and driving of heavy vehicle on the date of*

accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW-1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. <u>In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality.</u> Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors. (2013) 10 SCC 695 this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral *evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3 rd is to be made from the income of the deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/- per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/. As an amount of Rs.10,99,700/ is already paid towards the loss of dependency the appellant-parents are entitled for differential compensation of Rs.3,33,964/. Further in view of the judgment of this Court in the case of Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors. (2018) SCC Online SC 1546 = (2018) 18 SCC 130 the appellants are also entitled for parental consortium of Rs.40,000/- each. The finding of the Tribunal that parents cannot be treated as dependents runs contrary to the judgment of this Court in the case of Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr.(2009) 6 SCC 121. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited (2021) 2 SCC 166 relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record."*

8. Keeping in view the above-noted judgments, and the fact that the deceased was the owner of two trucks this Court deems it appropriate to

assess the income of the deceased as Rs.5,500/- per month. Further, in the present case the Tribunal has though rightly applied multiplier of '15' as well as deduction of 1/3rd, however, no addition has been made 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' is 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 claimants (wife and mother of the deceased) would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.5,500/-
2	Annual Income	[Rs.5,500x12] = Rs.66,000/-
3	Deduction 1/3rd	[Rs.66,000-22,000] = Rs.44,000/-
4	Future Prospects - 40%	[Rs.44,000+17,600] = Rs.61,600/-
5	Multiplier - 15	[Rs.61,600x15] = Rs.9,24,000/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Filial	 Rs.48,000/-

	(ii) Spousal	Rs.48,000/-
	Total Compensation	**Rs.10,56,000/-**

9. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 6% 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.

10. 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.

05.03.2024 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

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