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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2087-2015 (O&M)
Date of Decision : 05.12.2024

Poonam Sharma & Ors ... Appellant(s)

Versus

Sukhwinder Singh & Anr ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Ankur Gupta, Advocate for the 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, SAS Nagar, Mohali (hereinafter referred to as 'Tribunal') vide award dated 06.12.2014.

2. Since the factum of the accident is not in dispute, the facts are not being adverted to.

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

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.6,000/-
2	Annual income	[Rs.6,000 x 12] = Rs.72,000/-
3	Future prospects 30%	[Rs.72,000 + 21,600] = Rs.93,600/-
4	Deduction 1/5th	[Rs.93,600 – 18,720] = Rs.74,880/-
5	Multiplier of 13	[Rs.74,880 x 13] = Rs.9,73,440/-
6	Loss of consortium	Rs.1,00,000/-
7	Funeral expenses	Rs.25,000/-
8	**Total Compensation**	**Rs.10,98,440/-**
9	**Interest**	**6% per annum**

4. Learned counsel for the claimant-appellants would contend that before this Court an application (**CM-16056-CII-2015)** has been filed for permission to lead additional evidence. It is further the contention of the learned counsel that by way of the said application, the claimant-appellants have sought permission to produce on record the Income Tax Returns of the deceased for the Assessment Years 2011-12 and 2012-13. Reply has been filed by the Insurance Company. The learned counsel would further contend that the income of the deceased has been assessed by the Tribunal as Rs.6,000/- per month, however, as per the Income Tax Return for the Assessment Year 2012-13, the income of the deceased was Rs.2,04,500/- per annum (Rs.17,042/- per month). The learned counsel for the claimant-appellants has further relied upon the judgment of the Hon'ble Supreme Court in case of **Malarvizhi & Ors. Vs. United India Insurance Company Limited & Anr. [2020 (4) SCC 228]** to contend that the income tax returns are not to be ignored. The learned counsel for the claimant-appellants has further contended that the Tribunal has rightly applied 1/5th deduction, future prospects @ 30% as well as multiplier of '13'. However, the amounts awarded under the conventional heads as well as under the head 'loss of consortium' are not in accordance with the law laid down by the Hon'ble Supreme Court. In support of his contentions 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 the respondent No.2-Insurance Company would contend that additional evidence cannot be looked into at this stage as the Income Tax Returns ought to have been led in evidence before the Tribunal. However, the learned counsel is not in a position to dispute the fact that in the reply filed by the respondent No.2-Insurance Company, the genuineness of the Income Tax Returns is not disputed. It is further the contention of the learned counsel that the Tribunal has wrongly applied 1/5th deduction as well as future prospects @ 30% and 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, though the income of the deceased has been assessed as Rs.6,000/- per month, however, as per the Income Tax Return for the Assessment Year 2012-13 which is now sought to be led in additional evidence, the income of the deceased was Rs.2,04,500/- per annum (Rs.17,042/- per month). There is no reason for not considering the Income Tax Returns of the deceased to determine the annual income of the deceased. Hon'ble Supreme Court in the case of **Malarvizhi** (supra) has held as under:

> *"10. The Tribunal proceeded to determine the agricultural income arising from 36.76 acres of land on the basis of two judgments of the High Court. The Tribunal arrived at two different figures by applying the decisions and proceeded to determine the agricultural income on an average of the two amounts. The Tribunal superimposed a possible value of income from agricultural land despite a clear indication in the income tax returns of the income*

from agricultural land. The method adopted by the Tribunal is not sustainable in law. On the other hand, the High Court has proceeded on the basis of the income reflected in the income tax returns for the assessment year 1997-1998. The relevant portion of the return reads:

"Income from House property - Rs.1,920
Business profit (other than 14.b) - Rs.1,21,071
Net Agricultural income - Rs.88,140"

The tax return indicates an annual income of Rs.2,11,131 in the relevant assessment year. Mr. Jayanth Muth Raj, learned Senior Counsel appearing on behalf of the appellant contended that other documents were marked which reflected the income of the deceased. We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased."

Accordingly, in view of the law laid down by the Hon'ble Supreme Court in the case of **Malarvizhi** (supra), the annual income of the deceased is assessed as Rs.2,04,500/- (Rs.17,042/- x 12 per month) as per the Income Tax Return for the Assessment Year 2012-13.

8. The argument of the learned counsel for the respondent No.2-Insurance Company that the Tribunal has wrongly applied 1/5th deduction as well as future prospects @ 30%, deserves to be rejected in view of the fact that no appeal has been preferred by the respondent No.2-Insurance Company.

The respondent No.2-Insurance Company not being aggrieved by the award chose not to file an appeal and hence the argument raised by it same cannot be gone into in the present appeal.

9. The deduction of 1/5th, future prospects @ 30% as well as the multiplier of '13' have not been challenged by the learned counsel for the claimant-appellants and the same are maintained. Further, the amounts awarded under the conventional heads as well as under the head loss of consortium are not in consonance with 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). Accordingly, 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 (parents, widow and three children 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.17,042/-
2	Annual Income	[Rs.17,042x12]=Rs.2,04,504/-
3	Deduction 1/5th	[Rs.2,04,504-40,901]=Rs.1,63,603/-
4	Future Prospects - 30%	[Rs.1,63,603+49,081]=Rs.2,12,684/-
5	Multiplier - 13	[Rs.2,12,684x13]=Rs.27,64,892/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Parental (ii) Filial (iii) Spousal's	 [Rs.48,000/-x3] =Rs.1,44,000/- [Rs.48,000/-x2] =Rs.96,000/- Rs.48,000/- (Total Rs.2,88,000/-)
	Total Compensation	**Rs.30,88,892/-**

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 enhanced amount amount shall be apportioned between the claimants as directed by the Tribunal.

10. In view of the above discussion, the present appeal is allowed and the impugned award passed by the Tribunal stands modified in the above terms. Pending applications, if any, also stand disposed off.

05.12.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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