

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

...Appellant

...Respondents

...Appellants

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Mr.Ranjivan Singh, Ms.Kanika Toor and
Mr.Risham Garg, Advocates
for respondents No.5 and 6 (in FAO-4577-2013) and
for respondent No.1 and 2 (in FAO-8407-2014).

ARCHANA PURI, J.

VINEET GULATI
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I attest to the accuracy and
authenticity of this document
Chandigarh

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well as claimants to assail the Award dated 29.07.2013 passed by learned Motor Accident Claims Tribunal, on account of death of Buta Singh, in a motor vehicular accident, which took place on 17.02.2012.

FAO-4577-2013 has been filed by the National Insurance Company Ltd., thereby, assailing the quantum of compensation granted by learned Tribunal to the claimants and FAO-8407-2014 has been filed by the claimants, thereby, seeking enhancement of the compensation, as awarded by learned Tribunal.

So far as, the factum of accident and manner of its taking place is concerned, none of the respondent, including insurance company, had assailed the same. Rather, the insurance company has confined its claim only qua quantum of compensation. Therefore, there is no necessity, as such, to further subject the aforesaid issue to judicial scrutiny.

Be it noted that the accident had taken place on 17.02.2012, on account of rash and negligent driving of Canter bearing registration No.HR-65-1149.

In the claim petition, deceased Buta Singh was asserted to be 57 years old, at the time of accident and that he was working as Block Education Officer, Mandi Phul, at the relevant time and was drawing net salary of Rs.44,007/- per month and after making deductions, the salary being paid was Rs.42,447/-. The aforesaid fact stands established from the evidence brought on record. Though, in the claim petition, it was also asserted about the deceased to be earning Rs.10,000/- from milch animals, but the said assertion was discarded, on account of no evidence, coming on record.

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Considering the salary certificate Ex.C2, the income of Buta Singh was taken as Rs.44,007/- per month. After deducting 1/4th from the income, as 'personal expenses', the dependency of the claimants was taken as Rs.33006/-. Taking it to be so, annual dependency was worked upon as Rs.3,96,072/- and multiplier of '9' was applied and compensation was worked upon as Rs.35,64,648/-. Besides the same, Rs.5000/- each was granted towards 'funeral expenses' and 'loss of estate'. Another sum of Rs.5,000/- was granted to claimant No.1-widow of the deceased, on the count of 'loss of consortium'. In total, the compensation worked upon was Rs.35,79,648/-, which was rounded off as Rs.35,80,000/-. The said amount of compensation was apportioned to the extent of Rs.7 lakh to each of the children of the deceased i.e. Parminder Singh, Amrinder Singh and Gurpreet Kaur and Rs.14,80,000/- was granted to Sudarshan Rani, widow of the deceased.

At the very outset, learned counsel for the insurance company has assiduously submitted that salary certificate, coming on record, for the month of January 2012 Ex.C2, has been erroneously considered by learned Tribunal. The total salary of Rs.44,007/- has been considered as monthly earnings, whereas, it is submitted that income tax was required to be deducted. Also, besides the same, it is submitted by learned counsel for the insurance company that though, the deceased is stated to be 57 years old, but however, from the evidence, it is established that the deceased was to retire after four months, when the accident had taken place. In this regard, learned counsel for the insurance company has made reference to the cross-examination of sons of the deceased, when they stepped into witness box as

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CW-1 and CW-2.

In the light of the same, it is submitted that the compensation, so worked upon by learned Tribunal is on higher side, which calls for the reduction. As such, a prayer has been made for the acceptance of the appeal by learned counsel for the insurance company and consequential reduction to be made in the quantum of the compensation, already awarded.

So far as, employment of the deceased is concerned, there is no dispute between the parties. Even qua age, it is pertinent to mention that though, it is categorical claim of the claimants that the deceased was 57 years at the time of accident, but however, Parminder Singh, one of the sons of the deceased, had stepped into witness box as CW-1 and while facing cross-examination, he has admitted that his father was to retire after four months from the date of the accident. To the similar effect, is the admission coming from the mouth of CW-2 Amarinder Singh, the other son of the deceased. As such, in the absence of date of birth, specifically coming on record, it stands established that the deceased was about 57 years 8 months old, at the time of accident. The age of the retirement was 58 years. As such, the compensation could not be worked upon, on the basis of the salary certificate only. For the period of four months i.e. till the retirement of the deceased, the compensation, ought to be worked separately and compensation, for the post-retiral period, ought to be worked separately.

Before coming to the calculation, in the manner aforesaid, it is also pertinent to mention that learned counsel for the insurance company has also submitted that deduction, on the count of 'personal expenses' ought to be 1/3rd and not 1/4th, as done by learned Tribunal, as he submits that both

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the sons of the deceased were self-dependent and thus, cannot be taken to be dependent upon the deceased. He has pointed out to the cross-examination of both the sons of the deceased, where, they admitted about themselves to be aged persons, married and also about themselves to be well educated and following their own vocations. However, on this count, the submission so made in not tenable.

In this regard, beneficial reference is made to decision rendered in *National Insurance Company Limited v. Birender*, (2020) 11 SCC 356, wherein, it was held that even the major married and earning sons of the deceased, being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact, whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only.

In the light of the same, it is pertinent to mention that even though, sons of the deceased are well educated and married and may be settled in their own lives, but it cannot be said that they were not dependent upon their father. It is further pertinent to mention that the word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and other may be dependent in terms of service.

Thus, dependency is a relevant criteria to claim compensation for loss of dependency. It does not mean financial dependency only. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. Thus, considering the same, major sons

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of deceased, ought not to be deprived of the compensation, to be so worked upon.

In view of the aforesaid conclusion and keeping in view the number of the dependents/claimants to be four in number, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, deduction has to be to the extent of 1/4th. Further, it is pertinent to mention that as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, the established income means the income minus tax component.

In the given circumstances, there ought to be deduction made, on the count of income tax from the gross salary of the deceased. While considering the salary certificate Ex.C2, the deduction, on the count of income tax has already been made, which is to the extent of Rs.1500/-. While doing so, the net pay works out to be Rs.42,447/- per month, which is to be considered, as income of the deceased.

For the period, till the retirement of the deceased in normal course, this is the amount so taken and the total earnings for four months, works out to be Rs.42447x4=Rs.1,69,788/-. From the aforesaid amount, 1/4th is deducted, on the count of 'personal expenses' and the residue works out to be **Rs.1,27,341/-**. This is taken as amount of dependency of the claimants for the period of four months.

Had the deceased remained alive, after superannuation, at the age of 58 years, he would have drawn the pension, which is approximately 50% of the last drawn salary, which, in the present case, considering the salary certificate Ex.C2, would have been approximately Rs.21,000/-.

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Keeping in view the age of the deceased, as per *Pranay Sethi's case (supra)*, addition of 15%, on the count of 'future prospects' ought to be made. Thus, after addition of future prospects, the earnings are worked upon as $\text{Rs.}21000 + \text{Rs.}3150(15\%) = \text{Rs.}24,150/-$. From the aforesaid amount, $\frac{1}{4}$ th is to be deducted as 'personal expenses' and thus, the residue amount comes to be $\text{Rs.}18,113/-$, annual whereof, comes to be $\text{Rs.}2,17,356/-$

Considering the age of the deceased, as per *Sarla Verma's case (supra)*, appropriate and suitable multiplier, to be applied is '9' and by applying the same, the loss of dependency, works out to be $\text{Rs.}217356 \times 9 = \text{Rs.}19,56,204/-$.

Besides the aforesaid, under the conventional heads, as per *Pranay Sethi's case (supra)*, the compensation ought to be paid, on the count of 'loss of consortium', 'loss of estate' and 'funeral expenses'. As per *'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'*, whosoever are the dependents of the deceased/claimants, are entitled to 'parental', 'spousal' or 'filial' consortium, as required.

In view of the same, appellants-claimants are entitled to compensation, on the aforesaid counts. However, taking into consideration the enhancement as provided in *Pranay Sethi's case (supra)*, to the extent of 10%, after every three years of passing of the judgment, the compensation payable, on the count of 'loss of consortium' is to the extent of **Rs.48,400/-**, to each of the appellants-claimants and on the similar pattern, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Buta Singh, is re-computed, as herein given:-

Loss of dependency	:	Rs.19,56,204/-
Loss of consortium (four dependents)	:	Rs.1,93,600/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.21,86,104/-

To the aforesaid amount, addition of Rs.1,27,341/-, as worked upon aforesaid, which was for the period of four months, has to be made and thus, the total compensation works out to be **Rs.23,13,445/-**.

As such, the compensation granted by learned Tribunal is scaled down from **Rs.35,80,000/-** to **Rs.23,13,445/-**. The differential amount, shall be bifurcated amongst the claimants, in accord with the apportionment made by learned Tribunal and if amount was disbursed, the necessary recovery proceedings be conducted, as per law.

With the above observations, the appeal filed by the insurance company i.e. FAO-4577-2013 stands allowed, whereas, appeal filed by the claimants i.e. FAO-8407-2014 stands dismissed.

March 13, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No