767

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5572-2014 (O&M)
Date of decision : 20.02.2024

Oriental Insurance Company Ltd ... Appellant(s)

Versus

Jagtar Kaur & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Lalit Garg, Advocate for the appellant.

Mr. Ashwani Arora, Advocate with
Mr. Vipul Sharma, Advocate for the respondent Nos.1 to 4.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the appellant-Insurance Company aggrieved by award dated 08.05.2014 passed by the Motor Accident Claims Tribunal, SAS Nagar Mohali. The grouse of the appellant-Insurance Company is qua the quantum of compensation which has been awarded to the claimant-respondent Nos.1 to 4.

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.8,000/-
2	Future prospects	[Rs.8,000+4,000] = Rs.12,000/-
3	Deduction 50%	[Rs.12,000-6,000] = Rs.6,000/-
4	Compensation after multiplier '18'	Rs.6,000x12x18 = Rs.12,96,000/-
5	Funeral expenses	Rs.25,000/-
6	Loss of estate	Rs.25,000/-
7	**Total Compensation**	**Rs.13,46,000/-**
	Interest	**6% per annum**

4. Learned counsel for the appellant-Insurance Company would contend that despite there being no evidence qua the income of the deceased, monthly income of the deceased has been assessed as Rs.8,000/- whereas the minimum wage at the time of the accident was Rs.5,200/- per month. Further, an addition of 50% has been made towards future prospects whereas as per the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]** it ought to have been 40%. It is further the contention of the learned counsel that the amount awarded under the conventional heads is not as per the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), **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 Nos.1 to 4/claimants has contended that though there is no evidence qua the income of the deceased, however, the Tribunal has rightly assessed the income as Rs.8,000/- per month on the basis of guess work. In support of his contentions the learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Ali Kunhi vs. Abdu Salim & Ors. [Civil Appeal No.3543 of 2023 decided on 09.05.2023]; Kunta Devi & Ors. vs. Bhura Ram & Anr. [Civil Appeal No.5356-5359 of 2023 decided on 21.08.2023]** and **Jeyarani & Anr. Vs. The Manager Bajaj Allianz General Insurance Company Ltd. & Anr. [2023 ACJ 2390]**. The learned counsel for respondent Nos.1 to 4/claimants has further contended that no amount has been awarded under the head 'loss of consortium'.

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

7. In the present case the learned counsel for the appellant-Insurance Company has argued that the income of the deceased has been assessed as Rs.8,000/- per month without there being any evidence on the record. It was further argued that the minimum wage at the time of the accident was Rs.5,200/- per month. *Per contra* the learned counsel for respondent Nos.1 to 4/claimants has relied upon the judgment in the case of **Ali Kunhi** (supra) wherein the Hon'ble Supreme Court had assessed the income of the injured as Rs.5,000/- per month in the absence of any evidence and the accident in the said case took place in the year 2007. In **Kunta Devi's** (supra) the income of the deceased was assessed by the

Hon'ble Supreme Court as Rs.12,000/- per month in the absence of any evidence qua an accident which took place in the year 2009. In **Jeyarani's case** (supra) the Hon'ble Supreme Court had assessed the income of the deceased as Rs.9,000/- per month regarding an accident which took place in the year 2013 in the absence of any evidence.

8. 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. 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. 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."*

9. No doubt in the present case there is no evidence on the record qua the income and thus some amount of guess work is required to be done. However, the said guess work as laid down by the Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram** (supra), cannot be detached totally from reality. The mother of the deceased who stepped into the witness box has stated that her son was running a Kiryana shop in the name and style of Gorakh Kiryana Store and was earning Rs.20,000/- per month. The Tribunal has assessed the income of the deceased as Rs.8,000/- per month on the basis of guess work. Keeping in view the above-noted judgments, this Court finds it to be a case where the income of the deceased ought to have been assessed as Rs.7,000/- per month. Hence, the monthly income of the deceased is reduced from Rs.8,000/- to Rs.7,000/-. In the

present case, the Tribunal has though correctly applied a multiplier of '18' as well as deduction of 50%, however, 50% future prospects have been awarded by the Tribunal, whereas it ought to have been 40% as per the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra). Further, no amount has been awarded under the head 'loss of consortium' and the amount awarded under the conventional heads 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 claimant-appellants (mother, brother and sister 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.7,000/-
2	**Annual Income**	[Rs.7,000x12]=Rs.84,000/-
3	**Deduction 50%**	[Rs.84,000-42,000]=Rs.42,000/-
4	**Future Prospects - 40%**	[Rs.42,000+16,800]=Rs.58,800/-
5	**Multiplier - 18**	[Rs.58,800x18]=Rs.10,58,400/-
6	**Loss of estate**	Rs.18,000/-
7	**Funeral expenses**	Rs.18,000/-
8	**Loss of consortium** (i) Filial	 Rs.1,44,000/- [Rs.48,000/-x3]
	Total Compensation	**Rs.12,38,400/-**

10. 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.

11. In view of the above discussion, the present appeal is disposed off and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

20.02.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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