

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

106

FAO-5404-2015 (O&M)

Date of Decision : 20.02.2024

AMARJIT KAUR & ANR.

.... Appellants

VERSUS

MEWA SINGH & ORS.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ankur Gupta, Advocate for the appellants.

Service of respondents No.1 and 2 dispensed with
vide order dated 14.03.2016.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the claimant-appellants against the award dated 29.08.2014 passed by the Motor Accident claims Tribunal, Ludhiana.

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. Learned counsel for the claimant-appellants would contend that the deceased in the present case was 26 years of age and was working in Italy. It is further the contention that the salary certificate produced by the claimant-appellants has not been considered by the Tribunal and his salary has been assessed as Rs.6,000/- per month. It is further the contention that no amount has been awarded towards future prospects and multiplier of 11 has wrongly been applied and the same ought to have been 17 as per the law

laid down by the Supreme Court in the case of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]**. It is further the contention that the amount awarded under the conventional head is on the lower side and no amount has been awarded under the head loss of consortium. In support of his contentions the learned counsel for the claimant-appellants has relied upon the judgments of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]** and **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram & Ors. (2018) 18 SCC 13**.

4. *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. Learned counsel would further contend that there is nothing on the record to prove that the deceased was employed in Italy.

5. Heard.

6. In the present case the deceased had completed his course in BCA as per the certificate produced on the record. The salary certificate produced by the claimant-appellants was not relied upon by the Tribunal as the claimant-appellants did not disclose as to who has translated the same. Infact, none of the other supporting documents were produced on the record. Neither the passport nor the work permit was produced on the record. The 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.”

7. In the present case since the deceased was a qualified person and had completed his course in BCA, this Court deems it appropriate to assess his income as Rs.15,000/- per month. The Tribunal has though rightly applied deduction to the extent of 50%, however, a multiplier of ‘11’ has wrongly been applied and hence, as per the law laid down by the Hon’ble Supreme Court in the case of **Sarla Verma** (supra), multiplier of ‘17’ would be applicable keeping in view the age of the deceased being 26 years at the time of the accident. Further, no amount has been awarded 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. 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, being parents of the deceased, would also be entitled to

Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium.

8. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.15,000/-
2	Annual income [Rs.15,000/- x 12]	Rs.1,80,000/-
3	Deduction 50% [Rs.1,80,000/- - 50%]	Rs.90,000/-
4.	Future prospects @ 40% [Rs.90,000/- + 40%]	Rs.1,26,000/-
5	Multiplier 17 (Rs.1,26,000/- x 17)	Rs.21,42,000/-
6	Loss of estate (Rs.15,000 + 20% increase)	Rs.18,000/-
7	Funeral expenses (Rs.15,000 + 20% increase)	Rs.18,000/-
8	Loss of Consortium : (i) Filial (48,000 x 2)	Rs.96,000/-
9	Total Compensation	Rs.22,74,000/-

9. The amount in excess of and over and above the amount awarded by the Tribunal shall attract the enhanced interest @ 7.5% 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.

20.02.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No