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

**FAO-4789-2016 (O&M)
Reserved on: 09.09.2024
Pronounced on: 16.09.2024**

Sushila Devi and Ors. ... Appellants

Versus

Rajesh Yadav and Ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- None for the appellants.

Mr. Lovepreet Singh, Advocate for
Mr. Sanjeev Kodan, Advocate,
For respondent No. 3.

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HARKESH MANUJA, J.

1. The present appeal lays challenge to an award dated 08.04.2016 passed by the learned Motor Accident Claims Tribunal, Rewari (for brevity, “the Tribunal”), whereby compensation of Rs.17,37,400/- was awarded to the appellants/claimants along with interest @ 7% per annum.

2. The appellants/claimants being dependents of deceased, filed claim petition before the Tribunal, praying for grant of compensation to the tune of Rs.50,00,000/- along with the interest @ 24% per annum on account of death of Yatender in a vehicular accident which took place on 02.02.2014 while alleging rash and negligent driving of respondent No.1-driver.

3. Learned Tribunal held that accident occurred due to rash and negligent driving of respondent No.1/ driver and after assessing income of the deceased while working in Goshi India Auto (P) Ltd, @ Rs.10,200/- per

month and deducting Rs.1050/- towards allowances, awarded compensation in the following manner:-

S.No	Heads of Claim	Amount (in Rs)
1.	Loss of dependency	Rs. 16,52,400/-
2.	Loss of Estate	Rs. 10,000/-
3.	Expenses of last rites & transportation	Rs. 25,000/-
4.	Loss of love & affection to parents (Rs. 25,000 x 2)	Rs. 50,000/-
	Total	Rs.17,37,400/-

4. Being aggrieved against the award dated 08.04.2016, the present appeal has been preferred by the appellants/claimants for enhancement of compensation. Facts as specified in the claim petition and the issue regarding negligence of the driver been recorded in favour of appellants/claimants by the Tribunal, therefore, for the sake of brevity, those are not being repeated here.

5. There is no representation on behalf of the appellants-claimants.

6. Learned counsel representing the respondent-insurance company submitted that the learned Tribunal rightly deducted Rs.1,050/- from the actual salary of Rs. 11,225/- per month as those allowances were not permanent part of the basic salary. To substantiate his argument he placed reliance on a judgment passed by this Hon'ble Court in "***New India Assurance Company Ltd. Versus Shri Lal***" reported as 2023 NCPHHC 2141, the relevant para no. 17 is culled out as under:-

> *"It emerges from the legal position as above that though the dearness allowances, house rent allowance, CCA, medical allowance, EPF, GIS and insurance are to be treated as part of salary of the deceased and should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family bit the other*

allowances like conveyance/transport allowance and travelling reimbursement/travelling allowances, being personal to the deceased, cannot be taken into consideration."

7. He further pointed out that the learned Tribunal rightly deducted 1/2 of the income of deceased as personal expenses in view of ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, wherein it was held that in case the deceased was a bachelor and the claimants were parents, then 50% would be deducted as personal and living expenses.. Relevant para of the judgment is culled out as under:-

> *"**31.** Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.*
>
> *32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

8. Learned counsel also submitted that the future prospect were wrongly granted @ 50% and those should have been awarded @ 40% as the deceased was not having any permanent job. Lastly, he concluded his

arguments while saying that in the given facts and circumstances of the present case, appellants/claimants were adequately compensated and thus, the present appeal was liable to be dismissed.

9. I have heard learned counsel for the respondent and perused paper-book of the case.

10. In the present case, Sushila Devi (mother of the deceased) while deposing as PW-1 stated in her affidavit that deceased was working with Goshi India Auto (P) Ltd., and used to earn salary of Rs. 11,118/- per month. On the same time, Satpal (record keeper) of the company who appeared as PW-4, specifically deposed that deceased was an employee of their company since 2012 and further brought on record the salary statement of deceased for the month of October 2012 (Ex.PW4/D), salary slip of 2014 (Ex. PW4/A), ESIC number (EX.PW4/B) and salary statement of September and October 2014 as (Ex. PW4/C). Thus, it was duly proved that the deceased was earning Rs. 11,225/- per month and the factum of income was not even rebutted by the respondents by leading any cogent evidence. In such circumstances, in the humble opinion of this court learned Tribunal erred while deducting Rs. 1050/- from the gross income of deceased i.e. Rs. 11,225/- per month on account of allowances. Recently, the Hon'ble Apex Court in the case of "***Meenakshi v. Oriental Insurance Co. Ltd***.", reported as 2024 SCC OnLine SC 1872, held that dearness allowance and house rent allowance paid to the deceased should be included while assessing the income of deceased. Relevant paras of the said judgment are culled out as under:-

> "*8. In Raghuvir Singh Matolya v. Hari Singh Malviya, this Court held that the house rent allowance ought to be included for determining*

the income of the deceased. The relevant paras are extracted hereinbelow for ready reference:-

"*6. Dearness allowance, in our opinion, should form a part of the income. House rent allowance is paid for the benefit of the family members and not for the employee alone. What would constitute an income, albeit in a different fact situation, came up for consideration before this Court in National Insurance Co. Ltd. v. Indira Srivastava [(2008) 2 SCC 763] wherein it was held:.*

> *"19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.*
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> *20. The term 'income' in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn.) has been defined as under:-*
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> *(iii) the value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture.*
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> *'It has also been stated:'"Income" signifies "what comes in" (per Selborne, C., Jones v. Ogle [(1861-73) All ER Rep 918]). "It is as large a word as can be used" to denote a person's receipts (per Jessel, M.R., Huggins, ex p., Re [51 LJ Ch 935]). Income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. Secy. to the Board of Revenue, Income Tax v. Al. Ar. Rm. Arunachalam Chettiar & Bros. [AIR 1921 Mad 427] Ref. Vulcun Insurance Co. Ltd. v. Corpn. of Madras [AIR 1930 Mad 626 (2)].*
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> *21. If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax although some elements thereof may or may*

not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

To the same effect is the decision of this Court in Oriental Insurance Company Limited v. Ram Prasad Varma [(2009) 2 SCC 712 : (2009) 1 SCC (Cri) 853 : (2009) 1 Scale 598].

7. We, therefore, are of the opinion that "dearness allowance" and "<u>house rent allowance" payable to the deceased should have been included for determining the income of the deceased and consequently the amount of compensation."</u>

9. Recently in a judgment dated 11th July, 2024 in National Insurance Company Ltd. v. Nalini [Petition for Special Leave to Appeal (C) No. 4230/2019], this Court held that, allowances under the heads of transport allowance, house rent allowance, provident fund loan, provident fund and special allowance ought to be added while considering the basic salary of the victim/deceased to arrive at the dependency factor.

10. Therefore, components of house rent allowance, flexible benefit plan and company contribution to provident fund have to be included in the salary of the deceased while applying the component of rise in income by future prospects to determine the dependency factor. The Accident Claims Tribunal was justified in factoring these components into the salary of the deceased, before applying 50% rise by future prospects due to future prospects, while calculating the total compensation payable to the appellant."

Therefore, in view of the aforementioned discussion the gross salary of the deceased shall be taken as Rs. 11,225/- per month.

11. Further the contention raised by learned counsel for the respondents that deduction towards personal expenses as ½ of the income was rightly made, seems to be justified in view of the settled law and thus warrants no interference.

12. Coming to the next argument put forth by learned counsel for respondent that the future prospect should be assessed @ 40% instead of 50% as the deceased was working in a private company and not having any permanent job. The question that whether only the government servant

can be treated as being in “permanent job” for the purpose of grant/award of future prospects?. This has been recently dealt and answered by the Hon’ble High Court of Madhya Pradesh in the case of “***Smt. Anjum Ansari & Ors. V. R. Rajesh Rao & Anr, MA 2423 of 2018”***, vide order dated 20.07.2024 while relying on the judgment of Hon’ble Apex Court in “***National Insurance Company Ltd. Vs. Pranay Sethi***” reported as (2017) 16 SCC 680. The relevant para thereof is extracted as under:-

> *“9. Thus, from observations as well as principle of law laid down by Hon’ble Apex Court in Pranay Sethi (Supra), it is clearly evident that if a person is in such a job wherein his salary is increased periodically/receives annual increment etc., then, such person would be treated as being in “ permanent job”. Hence, in view of principle of law laid down in Pranay Sethi (Supra), it is not correct that only government servant would be treated as being in “permanent job.”*

13. Furthermore, in view of the judgments of the Hon’ble Apex Court in ***Smt. Sarla Verma’s*** *case (supra)*, **“*National Insurance Company Ltd. Vs. Pranay Sethi and others”***, 2017(4) RCR (Civil) 1009, and **“*United India Insurance Co. V. Satinder Kaur @ Satwinder Kaur & others”,*** *(2021) 11 SCC 780* compensation awarded under conventional heads is also required to be reassessed. Claimants are held entitled to Rs.18,000/- as compensation under the head of funeral expenses and Rs.18,000/- towards loss of estate by applying 10% increase under the conventional heads. Loss of consortium is to be awarded to the tune of Rs.48,000/- x 4 (Rs.1,92,000/-) as appellants/claimants being parents and siblings of deceased are also entitled for parental and filial consortium; but simultaneously, appellants/claimants are not entitled for compensation on account of loss of love and affection.

13. In view of the discussion made above, the appellants/claimants shall be entitled for the grant of following compensation:-

Sr.No.	***Nature***	***Amount in Rupees***
1.	*Annual Income of deceased (11225 x 12)*	*Rs.1,34,700/-*
2.	*Add 50% of Future prospects*	*Rs.67,350/-*
3	*Total Income (Rs.1,34,700/- + Rs.67,350)*	*Rs.2,02,050 /-*
4.	*Deduction (1/2)*	*Rs.1,01,025/-*
5.	*Loss of Income after applying multiplier of 18 as per age of19years(Rs.1,01,025/- X 18)*	*Rs.18,18,450/-*
6.	*Funeral Expenses*	*Rs.18,000/-*
7.	*Loss of Consortium (Rs.48000x4)*	*Rs.192,000/-*
8.	*Loss of Estate*	*Rs.18,000/-*
	Total Compensation	*Rs.20,46,450/-*
	Amount Awarded by the Tribunal	*Rs.17,37,400/-*
	Enhanced Amount	*Rs.3,09,050/-*

14. The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in ***"Smt. Supe Dei and others Vs. National Insurance Company Limited and other"***, (2009) (4) SCC 513 approved in a subsequent judgment titled as ***"Puttamma and others Vs. K.L. Narayana Reddy and another"***, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

15. Disposed of in the above terms.

16. In view of the fact that no one has appeared on behalf of the appellants/claimants, the registry of this court is directed to send a copy of this judgment on their postal address as well as to the learned counsel appearing on their behalf.

17. Pending miscellaneous application(s), if any, shall also stand disposed of.

16.09.2024 **(HARKESH MANUJA)**
Tejwinder **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*