106

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7381-2015 (O&M)
Date of decision : 21.02.2024

Oriental Insurance Company Ltd. ... Appellant(s)

Versus

Poonam & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Kapish Singla, Advocate for respondent Nos.1 to 6.

Mr. K.S. Dhanora, Advocate for respondent Nos.7 and 8.

ALKA SARIN, J. (ORAL)

CM-23200-CII-2015

This is an application for condonation of delay of 57 days in filing the appeal.

For the reasons stated in the application, delay of 57 days in filing the appeal is condoned. CM stands disposed off.

FAO-7381-2015

1. The present appeal has been preferred by the appellant-Insurance Company aggrieved by the award dated 06.05.2015 passed by the Motor Accident Claims Tribunal, Kurukshetra. The grouse of the appellant-Insurance Company is qua the quantum of compensation which has been awarded to the claimant-respondent Nos.1 to 6.

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	Calculation
(i)	Monthly income	Rs.8,715/- per month
(ii)	50% of (i) above to be added as future prospects	Rs.8,715+4357 = Rs.13,072/- per month
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	(Rs.13,072/- minus Rs.3,268/-) = Rs.9,804/- per month.
(iv)	Compensation after multiplier of 17 is applied	(Rs.9804x12x17) = Rs.20,00,016/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of love and affection, care and guidance for minor children	Rs.1,00,000/- each
(vi)	Loss of love and affection to parents	Rs.50,000/- each
(vii)	Loss of estate in lump-sum to all the claimants	Rs.1,00,000/-
(viii)	Transportation of dead body and funeral and last rites of deceased	Rs.25,000/-
	Total compensation awarded	**Rs.26,25,016/-**

4. Learned counsel for the appellant-Insurance Company would contend that the income of the deceased has wrongly been assessed as Rs.8,715/- per month. It is further the contention of the learned counsel that an addition of 50% has been made towards future prospects, whereas it ought to have been 40% and further that the amount awarded under the

conventional heads and under the head 'loss of consortium' are also excessive. In support of his contentions the learned counsel has relied upon the judgments of 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. Learned counsel for respondent Nos.1 to 6/claimants has relied upon the judgment of Hon'ble Supreme Court in the case of **Usha Devi & Ors. Vs. The New India Insurance Company Limited & Ors. [2020 (1) CivilLJ 854]** to contend that once the amount of compensation has been disbursed, the same should not be recovered from the claimants.

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.8,715/- per month without there being any evidence on the record. The Hon'ble Supreme Court in the case of **Ali Kunhi vs. Abdu Salim & Ors. [Civil Appeal No.3543 of 2023 decided on 09.05.2023]** 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 the case of **Kunta Devi & Ors. vs. Bhura Ram & Anr. [Civil Appeal No.5356-5359 of 2023 decided on 21.08.2023]** 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 the case of **Jeyarani & Anr. Vs. The Manager Bajaj Allianz General Insurance Company Ltd. & Anr. [2023 ACJ 2390]** 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*

<u>the deceased should not be totally detached from reality.</u> 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. Keeping in view the above-noted judgments, this Court does not find the income of the deceased assessed as Rs.8,715/- per month to be excessive. The argument of the learned counsel for the appellant-Insurance Company that future prospects ought to have been added @ 40% instead of 50% is accepted in view of the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra). In the present case though multiplier of '17' as well as deduction of $1/4^{th}$ have correctly been applied by the Tribunal, however, the amount awarded under the conventional heads as well as under the head 'loss of consortium' need to be reworked in view of 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 reworked compensation is as under :

Sr.No.	Heads	Compensation Awarded
1	Monthly Income	Rs.8,715/-
2	Annual Income	[Rs.8,715x12] = Rs.1,04,580/-
3	Deduction 1/4th	[Rs.1,04,580-26,145] = Rs.78,435/-
4	Future Prospects - 40%	[Rs.78,435+31,374] = Rs.1,09,809/-
5	Multiplier - 17	[Rs.1,09,809x17] = Rs.18,66,753/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Parental (ii) Filial (iii) Spousal	 [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.21,90,753/-
	Amount Awarded by the Tribunal	Rs.26,25,016/-
	Difference	**Rs.4,34,263/-**

10. The difference in the amount awarded by the Tribunal and the amount as reworked out is **Rs.4,34,263/-**. Since the amount of compensation awarded by the Tribunal already stands disbursed to the claimants, it is directed that the amount so disbursed shall not be recovered from them as per the law laid down by the Hon'ble Supreme Court in **Usha Devi's** case (supra).

11. Disposed off accordingly. Pending applications, if any, also stand disposed off.

21.02.2024 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

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