IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6224-2018 (O&M)
Date of Decision: 05.08.2024

Rajpreet Kaur and Ors ... Appellants

Versus

Sukhchain Singh and Anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Ashwani Arora, Advocate for the appellants.

Mr.Neeraj Khanna, Advocate
for respondent No. 2-United India Insurance Company Ltd.

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HARKESH MANUJA, J.

1. The present appeal lays challenge to an award dated 11.07.2018 passed by the learned Motor Accident Claims Tribunal, Tarn Taran (in brevity, "the Tribunal"), whereby compensation of Rs.13,55,200/- was awarded to the appellants/claimants along with interest @ 7.5% 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.75,00,000/- along with interest of 12% on account of death of Ranjit Singh in a vehicular accident which took place on 26.05.2017 alleging rash and negligent driving by 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 as that of labourer, at Rs.6,000/- per month, awarded compensation in the following manner-

S.No	Heads of Claim	Amount (in Rs)
1.	Loss of dependency	Rs.12,85,200/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of Consortium (widow)	Rs.40,000/-
4.	Funeral and last rites	Rs. 15,000/-
	Total	Rs.13,55,200/-

4. Being aggrieved against the award dated 11.07.2018, 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 upheld in favour of appellants/claimants by the Tribunal are not in dispute, therefore, for the sake of brevity, those are not being repeated here.

5. Learned counsel for the appellants/claimants assailed the award while submitting that income of the deceased, was Rs. 30,000/- per month as he was working as a carpenter and the same was never rebutted by the respondents by leading any evidence and therefore, Ld. Tribunal wrongly assessed the same as Rs.6,000/- only and thus it was liable to be enhanced. He further contended that even the loss of consortium has also not been granted to the family of the deceased as per the verdict in the case of "***United India Insurance Co. V. Satinder Kaur @ Satwinder Kaur & others***", (2021) 11 SCC 780. He concluded his arguments by submitting that the compensation granted against other heads was also on the lower side.

6. On the other hand, learned counsel representing the respondent-insurance company submitted that there was no basis to assess the income of the deceased as Rs. 30,000/- per month as no evidence except the bare testimonies of CW-1 namely Rajpreet Kaur (wife) and CW-3 namely Swaran Singh (father) was brought before the tribunal and therefore, the Tribunal rightly assessed his income as Rs. 6000/- per month. He further contended that appellants-claimants were adequately compensated and thus the present appeal was liable to be dismissed.

7. I have heard learned counsel for the parties and perused paper-book of the case. I find force in the arguments advanced by learned counsel for the appellants/claimants.

8. In the present case, it was argued that the deceased was working as a carpenter in view of the statement of CW-1 and CW-3, although no documentary evidence to support the same was placed before the learned Tribunal in this regard. Ld. Tribunal assessed the monthly income of the deceased as Rs. 6,000/- per month considering him as an unskilled labour without giving any reasoning in support. Even if the criteria of notional income on the basis of schedule prepared by the State Legal Services Authority or as per Workmen's Compensation Act was to be followed then also the minimum wages for an unskilled labour come out to be Rs. 7,568/- per month for the year 2017, in the State of Punjab. This court is of the view that though the deceased was working in an un-organized sector yet earning his livelihood as an expert, minimum wages could not be taken as an absolute criterion to assess his income even though no documentary evidence in this regards was available. It was held by Hon'ble Apex Court in "**Zakir Hussein vs Sabir and others"** reported

as **2015(2) RCR(Civil) 141** that notification of minimum wages is only a yardstick for assessing the income of the person but it is not an absolute factor to be taken into consideration, as at times it fails to meet the requirements that are needed to maintain the basic quality of life. Relevant para from this judgement is reproduced hereunder:

> *"14. We have carefully examined the facts of the case and material evidence on record in the light of the rival legal contentions urged before us by both the learned counsel on behalf of the parties to find out as to whether the appellant is entitled for further enhancement of compensation? We have perused the impugned judgment and order of the High Court and the award of the Tribunal. After careful examination of the facts and legal evidence on record, it is not in dispute that the appellant was working as a driver at the time of the accident and no doubt, he could be earning L 4,500/- per month. As per the notification issued by the State Government of Madhya Pradesh under Section 3 of the Minimum Wages Act, 1948, a person employed as a driver earns L 128/- per day, however the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage, as per State Government Notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index. Therefore, we are of the view that it would be just and reasonable to consider the appellant's daily wage at L 150/- per day (L 4,500/- per month i.e. L 54,000/- per annum) as he was a driver of the motor vehicle which is a skilled job. Further, the Tribunal has wrongly determined the loss of income during the course of his treatment at L 51,000/- for a period of one year and five months. We have to enhance the same to L 76,500/- (L 4,500 X 17 months)."*

9. In **"Kubrabibi v. Oriental Insurance Co. Ltd."**, reported as 2023(3) Apex Court Judgments (SC) 23, Hon'ble Apex Court held that in the absence of definite proof of income, the social status of the deceased is to be kept in perspective where such persons are employed in unorganized sector. Relevant para from this judgement is reproduced here under:

> *"7. In a matter of the present nature where the compensation is sought and even in the absence of definite proof of the income, the social status of the deceased is to be kept in perspective where such*

persons are employed in unorganized sector and the notional income in any event is required to be taken into consideration. The fact that the deceased had three dependents to be cared for and had claimed that he was working as a mechanic, the amount payable to an unskilled labour, cannot be the basis and in that circumstance when he was a skilled person, the daily income at Rs.200/- per day in any event could have been taken even if the income from jeep transport business was discarded for want of documents. More so in a circumstance, where the MACT had referred to the evidence available on record and then arrived at its conclusion, the re-appreciation of evidence by the High Court is without being sensitive to nature of lis before it."

10. In the given facts, learned Tribunal rejected the claim of claimants/appellants regarding income of the deceased as carpenter by observing that in the absence of any cogent documentary evidence regarding his salary, mere oral depositions in support cannot be held to be conclusive proof. However, ld. Tribunal, while doing so, failed to consider that Motor Vehicles Act, 1988 being a beneficial piece of legislation, strict rules of evidence as applicable in a civil or criminal trial, are not applicable in motor accident compensation cases. Reliance in this regard can be placed upon the judgement of Hon'ble Apex Court in **"Rajwati @ Rajjo v. United India Insurance Company Ltd."**, reported as 2023(3) Apex Court Judgments (SC) 684, relevant paras from which are reproduced hereunder:

"18. Similarly, in the case of Kusum Lata & Ors. v. Satbir & Ors. (2011) 3 SCC 646, this Court observed that it is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

19. It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in Sunita (Supra) and Kusum Lata (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, "the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases"."

11. In the present case, Rajpreet Kaur (wife) and Swaran Singh (father of the deceased) while deposing as CW-1 and CW-3 respectively deposed that deceased was working as a carpenter and drawing salary of Rs. 30,000/- per month. It cannot be denied that apart from maintaining his family including one minor child, he was also taking care of his old age mother being the only bread winner of his family. In such circumstances, assessing the income of the deceased as Rs. 6,000/- per month as an unskilled labour was not appropriate. Even if the salary as Rs.30,000/- as claimed by his wife was not to be completely taken into consideration, in the present facts it would be appropriate in case the income of the deceased was assessed as Rs. 10,000/- per month when he was working as a craftsman.

12. In view of judgment of the Hon'ble Apex Court in ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, and ***Satwinder Kaur's*** case (supra) 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 spouse and parents of deceased are also entitled for spousal and parental 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*	*Rs.1,20,000/-*
2.	*Add 40% of Future prospects*	*Rs.48,000/-*
3	*Total Income (Rs.1,20,000 + 48,000)*	*Rs.1,68.000/-*
4.	*Deduction (1/4th)*	*Rs.42,000/-*
5.	*Income after applying multiplier of 17 as per age of 26years(Rs.1,26,000/- X 17)*	*Rs.21,42,000/-*
7.	*Funeral Expenses*	*Rs.18,000/-*
8.	*Loss of Consortium (Rs.48000x4)*	*Rs.1,92,000/-*
9.	*Loss of Estate*	*Rs.18,000/-*
	Total Compensation	*Rs.23,70,000/-*
	Amount Awarded by the Tribunal	*Rs.13,55,200/-*
	Enhanced Amount	*Rs.10,14,800/-*

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 off in the above terms.

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

05.08.2024 **(HARKESH MANUJA)**
Tejwinder **JUDGE**

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