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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-16068-2018 (O&M)
Reserved on: 30.07.2024
Pronounced on: 07.08.2024

Boota Singh ... Appellant

Versus

Ashok Singh and Ors ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Gaurav Aggarwal, Advocate for the appellant.

(Through video conferencing)

Mr. Varun Mittal, Advocate for the respondent No. 2.

Mr.S.S. Sidhu, Advocate
for respondent No. 3-United India Insurance Company Ltd.

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HARKESH MANUJA, J.

1. The present appeal lays challenge to an award dated 12.09.2018 passed by the learned Motor Accident Claims Tribunal, Sirsa (in brevity, "the Tribunal"), whereby compensation of Rs.11,55,000/- was awarded to the appellant/claimant along with interest @ 7.5% per annum.

2. The appellant/claimant being dependent of deceased, filed claim petition before the Tribunal praying for grant of compensation to the tune of Rs.50,00,000/- on account of death of Sarabjeet Kaur in a vehicular accident which took place on 09.12.2016 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 by applying clause-6 of Second Schedule of MV Act, 1988 at Rs.5000/- per month, awarded compensation in the following manner-

S.No	Heads of Claim	Amount (in Rs)
1.	Loss of dependency	Rs.10,80,000/-
2.	Loss of love and affection and Funeral Expenses.	Rs.75,000/-
	Total	Rs.11,55,000/-

4. Being aggrieved against the award dated 12.09.2018, the present appeal has been preferred by the appellant/claimant for enhancement of compensation. Facts as specified in the claim petition and the issue regarding negligence of the driver been recorded in favour of appellant/claimant by the Tribunal, therefore, for the sake of brevity, those are not being repeated here.

5. Learned counsel for the appellant/claimant assailed the award by submitting that earning of the deceased, to the tune of Rs.15,000/- per month, was not rebutted by the respondents by leading any evidence and therefore, Ld. Tribunal wrongly took his monthly income as Rs.5,000/- and the same was liable to be enhanced. He substantiated this argument by adding that deceased earned Rs. 15,000/- by doing household works as well as she used to actively participate in daily assignments of dairy which was run by her husband (appellant/claimant), the same was even supported by his affidavit as Ex. PW1/A.He further contended that, benefit regarding future prospects was to be awarded in view of ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR

(Civil) 1009. Lastly, he submits that even the loss of consortium was not granted to the family 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 compensation granted under other heads was also on a very lower side.

6. On the other hand, learned counsel representing the respondent-insurance company submitted that there is no basis to assess the income of the deceased as Rs. 15,000/- per month as no evidence except the testimonies of PW1 was brought before the tribunal and therefore, the Tribunal rightly assessed her income as Rs. 5,000/- per month by applying clause-6 of Second Schedule of MV Act, 1988, while relying on the decision of the Hon'ble Apex Court in ***Arun Kumar Aggarwal V. National Insurance Co. Ltd***, reported as (2010) 9 SCC 218, wherein it was held that in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule. 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, learned Counsel for the appellant argued that the Ld. Tribunal wrongly assessed the income of the deceased as Rs. 5,000/- per month but it should have been Rs. 15,000/- per month, whereas the same was rebutted by the Learned Counsel for the respondent No. 3

while submitting that the income was correctly assessed in terms of ***Arun Kumar Aggarwal's*** case (supra). Coming to the facts and circumstances of the case, this court is of the view that the Ld. Tribunal wrongly assessed the income of deceased while relying on ***Arun Kumar Aggarwal's*** case (supra), as the second schedule was only applicable to the claim petition filed under Section 163-A of MV Act, and in absence of any definite criteria to compensate the non-earning homemaker/mother then only it was reasonable to rely upon second schedule. This question was dealt by the three bench of Hon'ble Apex Court in ***Kirti v. Oriental Insurance Co. Ltd***., reported as (2021) 2 SCC 166, wherein it was held as under:-

> *"**31.** Returning to the question of how such notional income of a homemaker is to be calculated, there can be no fixed approach. It is to be understood that in such cases the attempt by the court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances.*
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> ***32.** One method of computing the notional income of a homemaker is by using the formula provided in the Second Schedule to the Motor Vehicles Act, 1988, which has now been omitted by the Motor Vehicles (Amendment) Act, 2019. The Second Schedule provided that the income of a spouse could be calculated as one-third of the income of the earning surviving spouse. This was the method ultimately adopted by the Court in Arun Kumar Agrawal [Arun Kumar Agrawal v. National Insurance Co. Ltd., (2010) 9 SCC 218. However, rationale behind fixing the ratio as one-third is not very clear."*

9. It is no more a *res integra* that compensation has to be awarded by the Tribunals and Courts towards the death of a homemaker in case of a motor vehicle accident. The Hon'ble Supreme Court in ***Kirti's*** case (supra) observed that household work is no mean feat and fixing notional income for a non-earning "homemaker" is a step towards the

constitutional vision of social equality and ensuring dignity of life to all individuals. Relevant extract of the aforesaid judgment has been reproduced below:

> *"21. In* Arun Kumar Agrawal *v.* National Insurance Co. Ltd. *(2010) 9 SCC 218 this Court, while dealing with the grant of compensation for the death of a housewife due to a motor vehicle accident, held as follows : (SCC pp. 237-38, paras 26-27)*
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> *"26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc. but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.*
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> *27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term "services" is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer*

> *to render some of the services to the family which the deceased was giving earlier."*
>
> *………*
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> *30. The issue of fixing notional income for a homemaker, therefore, serves extremely important functions. It is a recognition of the multitude of women who are engaged in this activity, whether by choice or as a result of social/cultural norms. It signals to society at large that the law and the courts of the land believe in the value of the labour, services and sacrifices of homemakers. It is an acceptance of the idea that these activities contribute in a very real way to the economic condition of the family, and the economy of the nation, regardless of the fact that it may have been traditionally excluded from economic analyses. It is a reflection of changing attitudes and mindsets and of our international law obligations. And, most importantly, it is a step towards the constitutional vision of social equality and ensuring dignity of life to all individuals."*

10. In ***Rajendra Singh V. National Insurance Co. Ltd*** reported as (2020) 7 SCC 256, wherein also notional income of the deceased housewife/homemaker was calculated for the purpose of granting compensation in a motor accident case.

11. The Hon'ble Apex Court in its recent pronouncement ***Arvind Kumar Pandey v. Girish Pandey***, 2024 SCC OnLine SC 1027, held that the value of a woman's work at home is no less than that of someone who brings a salary from office, terming the contribution of a "homemaker" invaluable. Relevant para's from judgment are culled out as under:-

> **"*7.*** *Assuming that the deceased was not employed, it cannot be disputed that she was a homemaker. Her direct and indirect monthly income, in no circumstances, could be less than the wages admissible to a daily wager in the State of Uttarakhand under the Minimum Wages Act.*
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> ***8.*** *It goes without saying that the role of a homemaker is as important as that of a family member whose income is*

tangible as a source of livelihood for the family. The activities performed by a home-maker, if counted one by one, there will hardly be any doubt that the contribution of a home-maker is of a high order and invaluable. In fact, it is difficult to assess such a contribution in monetary terms."

12. In view of the aforementioned, it is pertinent to point out that the Ld. Tribunal failed to consider the income of deceased on the basis of notional income. The minimum wages in Haryana for the year 2016 was Rs. 8070/- per month of an unskilled labour, wherein the same had been taken as Rs.5,000/- per month on the basis of second schedule. Therefore, in the given facts the income of the deceased should have been assessed as Rs. 8070/- per month.

13. A Division Bench of this Hon'ble Court in the case of ***Paramjit Singh & Anr. V. Dilbagh Singh @ Bagga &Ors***. 2014(4) R.C.R.(Civil) 895, held that no deduction would be done from the personal and living expenses of the deceased in case of a home maker. Relevant exacts of the judgment are extracted as under:-

"13. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be L 3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether ⅓rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, ***in***

> ***our considered view***, *the deduction of ⅓rd out of her notional income is not warranted.*
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> *14. We may hasten to add that in all those cases, referred to above, in which ⅓rd cut has been applied, no reasoning has been given by the learned Single Judge rather in the cases, referred to above, in which ⅓rd cut has not been applied, the learned Single Judge had observed that L 3,000/- per month is assessed as monthly value of her services and not her monthly income and, therefore, the concept of deduction cannot be applied.* ***In view of the aforesaid*** *discussion,* ***we are of the considered view*** *that while calculating the notional income of the housewife, the entire income should be taken as dependency of the legal heirs without applying any cut much-less ⅓rd, as has been done in certain cases.*
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> *15. Since we had taken up the main case as well for decision, the compensation is, thus, ordered to be assessed @ L 3,000/- per month. While quantifying the same, it has to be multiplied by 12 which comes to L 36,000/- per annum and on applying multiplier of 14, it comes to L 5,04,000/-. The said amount is ordered to be paid along with L 5,000/- under the head of loss of estate and L 5,000/- as funeral expenses. The total compensation, thus, comes to L 5,14,000/- instead of L 3,46,000/-. Meaning thereby, the appellants would get an extra amount of L 1,68,000/- along with interest @ 6% per annum from the date of filing of the claim petition till its actual realization. However, rest of the terms would remain the same as settled by the learned Tribunal vide its order dated 04.01.2012."*

14. Further, 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, ***Pranay Sethi's*** *case (supra)*, and ***Satwinder Kaur's*** case (supra) compensation awarded under conventional heads is also required to be reassessed. Claimant is held entitled to Rs.18,000/- as compensation under the head of funeral expensesand 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/-as

appellant/claimant being husband of the deceased is entitled for spousal consortium; but simultaneously, appellant/claimant are not entitled for compensation on account of loss of love and affection.

15. Furthermore, in view of ***Pranay Sethi's*** *case (supra)*, learned counsel for respondent No.3-Insurance Company is also not in a position to deny that the future prospect should have been awarded @40% as the age of deceased was 25 years old at the time of accident

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.8070x12)*	*Rs.96,840/-*
2.	*Add 40% of Future prospects*	*Rs.38,736/-*
3	*Total Income (Rs.96,840/- + Rs.38,736/-)*	*Rs.1,35,576/-*
4.	*Income after applying multiplier of 18 as per age of 15-25 years(Rs.1,35,576 /- X 18)*	*Rs.24,40,368*
5.	*Funeral Expenses*	*Rs.18,000/-*
6.	*Loss of Consortium*	*Rs.48,000/-*
7.	*Loss of Estate*	*Rs.18,000/-*
	Total Compensation	*Rs.25,24,368/-*
	Amount Awarded by the Tribunal	*Rs.11,55,000/-*
	Enhanced Amount	*Rs.13,69,368/-*

14. The grant of interest @ 7.5% per annum is not just in view of the facts andcircumstances 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 claims 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.

07.08.2024 **(HARKESH MANUJA)**
Tejwinder **JUDGE**

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