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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1545-2017 (O&M)
Date of Decision : 01.09.2025

Santosh & Ors ... Appellant(s)

Versus

Satish Kumar & Anr ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Nipun Vashist, Advocate for the appellants.
Brig. B.S. Taunque (Retd.), Advocate for respondent No.2.

ALKA SARIN, J. (Oral)

CM-5154-CII-2017

1. For the reasons mentioned therein, the application seeking condonation of delay of 02 days in filing the appeal is allowed and the delay of 02 days in filing the appeal is condoned.

CM-5153-CII-2017

2. For the reasons mentioned therein, the application seeking condonation of delay of 720 days in refiling the appeal is allowed and the delay of 720 days in refiling the appeal is condoned.

FAO-1545-2017

3. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as 'Tribunal'), vide the impugned award dated 26.04.2014 in a motor vehicle accident which occurred on 09.04.2011.

4. Brief facts relevant to the present *lis* are that on 09.04.2011 the deceased along with his cousin brother Satyvir Singh was going from village Dahina to village Dhawana in a jeep bearing Registration No.HR-35A-0751 (hereinafter referred to as 'offending vehicle) which was being driven by respondent No.1 in a rash and negligent manner and at a high speed. The deceased and his brother Satyvir Singh asked the driver of the offending vehicle (respondent No.1 herein) time and again to drive the same at a normal speed but he did not pay any heed to their requests and at about 05.30 pm, when they reached Village Dhani Thatherabad, respondent No.1 could not control the offending vehicle and ultimately the offending vehicle suffered a severe jerk as a result of which the deceased fell on the road and sustained multiple grievous injuries. He was taken to Government Hospital, Rewari where he was declared as brought dead. An FIR No.63 dated 09.04.2011 under Sections 279 and 304A of the Indian Penal Code, 1860 was registered at Police Station, Khol.

5. On notice, respondent No.1 filed his written statement denying the factum of the accident. It was averred that the claimant-appellants had filed a false and fictitious petition only to extort money. Respondent No.2-Insurance Company filed its separate written statement and denied the factum of the accident. It was further averred that respondent No.1 was not holding a valid and effective driving licence.

6. On the basis of the pleadings of the parties, the following issues were framed :

> 1. Whether the accident in question resulting in death of Bille Singh had occurred on 9.4.2011 due to rash and negligent driving of vehicle No. HR35A-0751 by its driver

respondent No.1 ? OPP

2. Whether the petitioners are entitled to compensation, if so to what amount and from whom ? OPP

3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident ? OPR

4. Relief.

7. Vide the impugned award dated 26.04.2014 the Tribunal allowed the claim petition and awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	₹24,960/-
2	Deduction 1/3rd	[₹24,960 –8,320] = ₹16,640
3	Annual Income	[₹16,640 x 12] = ₹1,99,680/-
4	Future prospects 15%	[₹1,99,680 + 29,952] = ₹2,29,632/-
5	Multiplier of 11	[₹2,29,632 x 11] = ₹25,25,952/-
6	Funeral expenses	₹25,000/-
7	Loss of consortium	₹1,00,000/-
8	**Total Compensation**	**₹26,50,952/-**
	Interest	**7.5% per annum**

8. Learned counsel for the claimant-appellants states that he does not challenge the deduction, future prospects and multiplier as applied by the Tribunal. He, however, states that the Tribunal has wrongly taken the basic pay, grade pay and dearness allowance while assessing the income of the deceased and excluded all other allowances which were being paid by the Government, hence, his income ought to have been assessed on the basis of his gross salary of ₹31,465/- without making any deduction on account of the allowances. In support of his contentions, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Sunil Sharma & Ors. Vs. Bachitar**

Singh & Ors. [2011(11) SCC 425]. It is further the contention of the learned counsel that the compensation awarded under the conventional heads as well as under the head 'loss of consortium' is not in accordance with the law laid down by the 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]**.

9. *Per contra* learned counsel for respondent No.2-Insurance Company would contend that in the present case the deceased at best can be considered to be a gratuitous passenger inasmuch as there was no offending vehicle. It is further the contention of the learned counsel that the deceased was travelling alongwith the driver in the jeep bearing Registration No.HR-35A-0751 and due to the rash and negligent driving of the driver (respondent No.1) he had fallen out of the jeep, hence, the present case could not have been considered under Section 166 of the Motor Vehicles Act, 1988. It is further the contention of the learned counsel that the compensation awarded under the conventional heads as well as under the head 'loss of consortium' is highly excessive.

10. I have heard the learned counsel for the parties.

11. In the present case the Insurance Company filed its written statement and raised no such plea before the Tribunal nor claimed any such issue. The Insurance Company has not even filed an appeal before this Court challenging the impugned award passed by the Tribunal. In view thereof, the arguments raised by the learned counsel for the Insurance Company are rejected.

12. The argument of the learned counsel for the claimant-appellants that no deduction can be made while assessing the income from the gross salary being received by the deceased deserves to be accepted in view of the law laid down by the Hon'ble Supreme Court in the case of **Sunil Sharma** (supra), wherein it has been held as under :

> *"8. In the case of National Insurance Co. Ltd. v. Indira Srivastava & Ors., 2008(1) RCR (Civil) 359 : 2007(6) R.A.J. 640 : 2009(1) AICJ 195 , S.B. Sinha J, has observed that "The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monitory terms." His Lordship also stated that if some facilities were being provided whereby the entire family stood to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis of which the amount of compensation payable for the death of the kith and kin of the applicants was required to be determined. This Court held that superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family. This Court clarified that by opining that 'just compensation' must be determined having regard to*

the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost in view of death of the deceased. It is in the nature of compensation for future loss towards the family income" and that "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 contra-distinguished 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."

9. In Raghuvir Singh Matolya & Ors. v. Hari Singh Malviya & Ors., 2009(3) RCR (Civil) 795 : 2009(4) R.A.J. 346 : 2009(2) AICJ 164 : (2009)15 SCC 363, this Court has observed that dearness allowance and house rent allowance should be included for computation of income of the deceased.

10. XXX XXX XXX

11. Based on the aforementioned judgments, we are of the view that deductions made by the Tribunal on account of HRA, CCA and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased."

13. In view thereof, the income of the deceased is assessed as

₹31,465/- per month on the basis of his gross salary. There is no challenge laid by the learned counsel for the claimant-appellants to the deduction, future prospects and multiplier as applied by the Tribunal, hence, the same are accordingly maintained. Further, the compensation awarded under the conventional heads and under the head 'loss of consortium' is not as per 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), hence, the claimants would be entitled to ₹18,000/- (₹15,000+20% increase) towards loss of estate and ₹18,000/- (₹15,000+20% increase) towards funeral expenses and the claimants (wife and two sons of the deceased) would also be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

Sr.No.	Heads	Compensation Awarded
1	Monthly Income	₹31,465/-
2	Annual Income	₹3,77,580/- [₹31,465 x 12]
3	Deduction - 1/3rd	₹2,51,720/- [₹3,77,580 - ₹1,25,860]
4	Future Prospects - 15%	₹2,89,478/- [₹2,51,720 + ₹37,758]
5	Multiplier - 11	₹31,84,258/- [₹2,89,478 x 11]
6	Loss of estate	₹18,000/-
7	Funeral expenses	₹18,000/-
8	Loss of consortium (i) Parental [₹48,000/- x 2] (ii) Spousal	 ₹96,000/- ₹48,000/- (Total ₹1,44,000/-)
	Total Compensation	**₹33,64,258/-**

14. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

15. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh Vs. Honey Goyal & Ors. [AIR 2025 SC 1713 = 2025 SCC OnLine SC 567]**, after calculation of the enhanced amount, the same be transferred by the Insurance Company in the bank account(s) of the claimants within six weeks from today and the apportionment thereof shall be as per the direction of the Tribunal. The particulars of the bank account(s) alongwith the requisite documents(s) in support thereof shall be furnished by the claimants to the Insurance company within a period of two weeks from the date of this order and needful shall be done by the Insurance Company after verification thereof within four weeks thereafter alongwith up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

16. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal stands modified accordingly. Pending applications, if any, also stand disposed off.

01.09.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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