(2019) 02 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 2363 Of 2013

Kanta Goyal And Others APPELLANT

Vs

Anil Bansal And Another RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Citation : (2019) 02 P&H CK 0064

Hon'ble Judges : B.S.Walia, J

Bench : Single Bench

Advocate : Rishav Jain, Kanish Jindal, Vandana Malhotra

Final Decision : Allowed

Judgement

B.S.Walia, J

1. Appeal has been filed seeking enhancement of compensation of Rs.27,46,000/- awarded by the learned Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') on account of death of Hem Raj, husband of appellant No.1 and father of appellant Nos.2 and 3, in a motor vehicular accident on 07.11.2011.

2. The learned Tribunal by taking into account the age of the deceased as 54 years, making deduction of 1/3rd of the income of the deceased towards his personal expenses, by applying multiplier of '6, by making deduction of Rs.3,823/ on account of payment towards Employees Provident Fund contribution, Rs.1912/- towards Employees Additional Provident Fund and Rs.5824/- towards income tax out of total income of Rs.62,134.13 per month, assessed the income of the deceased @ Rs.56,343/-per month for the purpose of computing the compensation payable.

3. Prayer is for enhancement on the ground that despite entitlement no amount had been paid towards future prospectus. Besides deduction of Rs.3,823/- on account of payment towards the Employees Provident Fund, Rs.1,912/- towards

additional Employees Provident Fund was legally unsustainable and further that amount of Rs.10,000/- awarded towards funeral expenses was on the lower side and was liable to be enhanced to Rs.15,000/-. Moreover, no amount was paid on account of loss of estate as also loss of consortium. Lastly that as against the requirement of applying multiplier of 11, multiplier of '6' had wrongly been applied by the learned Tribunal.

4. Learned counsel for respondent No.2-Insurance Company has not been able to controvert the claim of the appellant in view of the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009. However, learned counsel contended that income tax deduction of Rs.69,888/- made by treating the monthly payment towards income tax @ Rs.5824/- was on the lower side and that the income tax liability for the entire year worked out to Rs.83,129/-. Learned counsel for the appellants did not controvert the plea of learned counsel for the Insurance Company to deduct income tax @ Rs.83,129/- per annum instead of @ Rs.69,888/-

5. I have considered the submissions of learned counsel for the parties and am of the view that in view of the decision of Hon'ble the Supreme Court in Manasvi Jain vs. Delhi Transport Corporation 2014 (13) SCC 22, contribution towards GPF, House Rent, Insurance etc. are not to be deducted from the salary and only deduction on account of income tax is to be excluded. Relevant extract of the decision in Manasvi Jain's case (supra) is reproduced as under:-

13. In the present case, there is no dispute about of the salary of the deceased. As per salary certificate, his monthly income and deductions are as under:

Monthly Income

Rs. 26,950-00

Deductions

Provident Fund

Rs. 8,000-00

House Rent

Rs. 525-00

G.I.S.

Rs. 120-00

Income Tax

Rs. 2,500-00

So, from the above table, it is clear that except an amount of Rs.2,500/- towards Income Tax, rest of the amounts were voluntarily contributed by the deceased for the welfare of his family. Considering the decision of this Court in Shyamwati Sharma & Ors., (supra), in our opinion, except contribution towards Income Tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary. Hence, the take home salary of the deceased comes to Rs.24,450/- which can be rounded to Rs.25,000/-."

6. Accordingly in view of the decision in Manasvi Jain's case (supra), except contribution towards income tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary.

7. Accordingly, deduction of Rs.3,823/- on account of Employees Provident Fund contribution and Rs.1912/- as Additional Provident Fund is legally unsustainable. The income of the deceased before making deduction was taken by the Tribunal at Rs.62,134.13/- i.e. Rs.7,45,608/- per annum, after deducting Rs.69,888/- on account of income tax instead of Rs.83,129/-. Accordingly, the net annual income works out to Rs.6,62,479/- or in other words Rs.55,206.58/- rounded off to Rs.55,207/- per month. Since, the deceased was 54 years of age, therefore, as per paragraph No.21 of the decision of Hon'ble the Supreme Court in Sarla Verma Vs. Delhi Transport Co-op. and another, 2009 (3) RCR (Civil) 77, multiplier of '11' would be applicable instead of '6' as applied by the learned Tribunal.

8. As regards appropriate compensation under conventional heads, as per paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), compensation of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively is to be awarded on account of loss of estate, loss of spousal consortium and funeral expenses.

9. After taking into account decision rendered in Pranay Sethi's case (supra), Hon'ble the Supreme Court in a subsequent decision in Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram, 2018 (4) RCR Civil 333, held that children of the deceased are entitled to Rs.40,000/- each on account of loss of parental consortium. However, in view of the subsequent decision of Hon'ble the Supreme Court in Vimla Devi and others vs. National Insurance Company Ltd. and others 2019 RCR (Civil) 80, compensation of Rs.1,20,000/- on account of loss of spousal/parental consortium is restricted to Rs.1,00,000/-.

10. As per paragraph No.61 (iii) of the decision in Pranay Sethi's case (supra), where the deceased was between the age group of 50 to 60 years, 15% of the established income of the deceased less tax component is to be added towards future prospects while computing compensation.

Since in the instant case the deceased was a permanent employee in State Bank of Patiala and was between the age group of 50 to 60 years, therefore 15% of the established income of the deceased minus tax component is liable to be added on account of future prospects while computing compensation.

11. Accordingly, the appellants are held entitled to award of Rs.15,000/- on account of loss of estate, Rs.15,000/- on account of funeral expenses besides consolidated amount of Rs.1 Lakh to appellant No.1-wife and appellant Nos.2 and 3/children on account of loss of spousal/parental consortium.

12. In the circumstances, the appellants are held entitled to the following compensation:-

Sr.

Head

Amount assessed by the

Amount assessed by this

No.

Tribunal

Court

1

Income

Rs.56,343/-

Rs.55,207/-

2

Future Prospects

Nil

Rs.8281/ i.e. 15% of Rs.55,207)

3.

Total Income

Rs.56,343/-

Rs.63,488/-

4.

Multiplier applied

6

11

5.

Deduction

@ 1/3rd Rs.18343/-

1/3rd of Rs.63,488/- i.e.

Rs.21,163/-

6.

Dependency

Rs.38,000x12x6=Rs.27,36,000/-

Rs.42,325x12x11=Rs.55,86,900/-

7.

Funeral Expenses

Rs.10,000/-

Rs.15,000/-

8.

Loss of Estate

Nil.

Rs.15,000/-

9.

Loss of Consortium

Nil.

Rs.40,000/- to widow on

account of loss of spousal

consortium, Rs.40,000/- to

each of the two children on

account of loss of parental

consortium. However,

compensation awarded on

account of loss of consortium

is restricted to Rs.1 Lakh in

view of the decision in Vimla

Devi's case (supra)

10.

Interest

7% per annum

7% per annum

Total

Rs.27,46,000/-

Rs.57,16,900/-

13. Accordingly, as against the compensation of Rs.27,46,000/-awarded by the Tribunal, the appellants are held entitled to award of compensation of Rs.57,16,900/- along with interest @ 7% per annum w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid.

14. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares determined by the Tribunal. The Insurance Company shall make the payment to the appellants after making deduction of the tax liability, if any, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

15. Accordingly, appeal is allowed and award dated 02.01.2013, passed by the learned Tribunal, Patiala is modified to the extent as noted above.