Sr No. 101

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4695 of 2013
Date of decision: 22.11.2017

Smt. Lalita Rani and others

.....Appellants

versus

Vishwajit Singh Minhas and another

.....Respondents

Coram: **Hon'ble Mr. Justice Rajbir Sehrawat**

Present: Mr. Satbir Singh Katnoria, Advocate
for the appellants.

Mr. Rakesh Gupta, Advocate
for respondent No. 2.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the claimants challenging the award passed by the Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') on the ground of insufficiency of compensation awarded to them; on account of death of Ashok Kumar.

The facts of the case, as mentioned in the award of the Tribunal, are that on 01.08.2009, Ashok Kumar was pillion riding a scooter bearing Registration No. CHT-114; driven by Mahender Singh Jatt. They were going to Manimajra after closing their shops situated in Sector 8-B, Chandigarh. When they reached on the road dividing Sectors 7 and 8 and turned their scooter towards left side, the car bearing Registration No. HP-33-B-3004(hereinafter referred as 'offending vehicle'), driven by respondent No. 1 rashly and negligently, came from back side, i.e., from the Madhya Marg, Chandigarh and hit the scooter. As a result thereof, the persons on the

scooter fell on the road and received head injury along with other multiple injuries. They were taken to the PGI, Chandigarh. However, Ashok Kumar succumbed to the injuries at PGI, Chandigarh on 5.8.2009. In view of this, the claimants filed a claim petition; claiming the negligence on the part of respondent No. 1. It was pleaded that deceased Ashok Kumar was 50 years of age. He was having a shop of vegetable in Sector 8, Chandigarh. His income was claimed to be ₹ 20,000/- per month. Accordingly, the compensation, was claimed by the claimants, who are the widow, two daughters and one son of deceased Ashok Kumar.

Upon notice, the driver-cum-owner of the offending vehicle/ respondent No. 1 filed written statement pleading that no accident was caused by him. It was further denied that the offending car was being driven in a rash and negligent manner. Respondent No. 2 in the claim petition, the Insurance Company, also filed a separate written statement taking routine preliminary objection and claiming that the driver of the offending car was not holding a valid driving license at the time of accident. On merit, it was further pleaded that no accident, as alleged, had taken place. Still further, it was claimed that no intimation regarding the accident was given to the Insurance Company.

Parties led their evidence.

After hearing the parties, the Tribunal awarded an amount of ₹7,12,000/- as total compensation. To arrive at this figure, the Tribunal assessed the notional income of the deceased at ₹6,000/- per month. The Tribunal held that though it has come on record that the deceased was a licensed vegetable vendor; having a permanent shop in Sector 8, Chandigarh; and his wife has deposed that the deceased was earning

₹20,000/- per month, however, no documentary evidence has been led to prove that the deceased was earning ₹ 20,000/- per month. Therefore, the Tribunal; taking into consideration the facts and circumstances assessed the income of the deceased to be ₹ 6,000/- per month. Deduction of 1/4th was applied to it, as personal expenses. Annual dependency was thus assessed to be ₹54,000/-. Keeping in view the age of the deceased, multiplier of 13 was applied. Hence the total loss of dependency of ₹ 7,02,000/- was assessed. Besides this, ₹5,000/- was added towards funeral expenses and ₹5,000/- was added towards loss of consortium. Thus, a total amount of ₹ 7,12,000/- was awarded.

Learned counsel for the appellants has submitted that the Tribunal has gone wrong in law in assessing the income of the deceased to be on the lower side. He has submitted that since it has come on record that the deceased was an established shop keeper in the business of vegetable vendor, having license and his own shop, therefore, the deposition made by the wife of the deceased that the deceased was earning ₹20,000/- per month stands corroborated. Hence his submission is that the income of the deceased should be taken at ₹20,000/- per month. Still further learned counsel submits that the claimants have not been granted the benefit of future prospects. To support his argument, the learned counsel placed reliance on the latest judgment of the Hon'ble Supreme Court rendered in the case of ***National Insurance Company Limited vs. Pranay Sethi and others 2017 ACJ 2700.*** It is further argued by learned counsel for the appellants that the amount awarded on account of funeral expenses and on account of loss of consortium is grossly inadequate and the same deserves to be enhanced. In the end, learned counsel submitted that no

compensation has been granted on account of loss of estate. Accordingly, the enhancement of the amount is prayed for.

On the other hand, learned counsel for the respondent/Insurance Company submits that income has rightly been taken by the Tribunal at ₹6,000/- per month since no documentary evidence has been led by the claimants. It is his submission that no record of income tax return of the deceased had been placed on record; although he was having a PAN card. Therefore, the Tribunal has rightly assessed the income. On the point of future prospects, learned counsel submits that the matter has been considered by the Hon'ble Supreme Court in the judgment of ***National Insurance Company Limited*** *(supra)* and as per that judgment the benefit of future prospects can be granted only in case of established income. Therefore, learned counsel submits that since the income has not been proved on record by leading documentary evidence, therefore, no benefit of future prospects can be granted in the present case. It is his further submission that the compensation on account of funeral expenses and loss of consortium has also been rightly granted by the Tribunal and the same need not be enhanced. Learned counsel further submits that the multiplier in the present case has to be less than 13 because the deceased had crossed the age of 50.

Having heard the learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that the arguments advanced by learned counsel for the appellants deserve to be sustained and the compensation granted to the claimants deserves to be enhanced.

So far as income of the deceased is concerned, the Tribunal has

taken the income to be ₹ 6,000/- per month although the claimants had claimed the same to be ₹ 20,000/- per month. Since the documentary evidence, in the form of business records, has not been placed on record to substantiate the claim of income of ₹ 20,000/- per month, therefore, this figure cannot be accepted by the Court on its face value. Hence, the income cannot be taken to be ₹ 20,000/- per month, as claimed by the appellants. However, it is proved on record that the deceased was not an ordinary labour. He was having his own shop in main market of Sector 8, Chandigarh. It has also been proved on record that he was having a license of vegetable vendor. Still further, it has come on record that on that fateful day also, he was returning from the same shop to his residence after ending the business day. Therefore, in view of the circumstances, the income of the deceased cannot be taken to be less than, atleast, ₹350/- per day. The Court cannot loose sight of the fact that Sector 8, Chandigarh is a main market and fully developed sector. The market in this sector commanded a very high value in the year 2009. So, even the rental value of the shop of the deceased would have been more than Rs. 6,000/- per month. Despite this, the deceased was occupying the shop and carrying on his own business. Hence, the monthly income of the deceased is taken to be ₹10,000/- per month.

So far as the future prospects is concerned, this point has already been considered by the Hon'ble Supreme Court in the case of ***National Insurance Company limited(supra)*** and it has been held that the benefit of future prospects cannot be denied to a self-employed person. The Hon'ble Supreme Court has further held that in case of a person of the age of 50 to 60 years; the benefit of future prospects @ 10% of the established

income is to be given. The objection of learned counsel for the respondent that the benefit of future prospect can be granted only if the income is established by the claimants by leading the documentary evidence is to be noticed only to be rejected. Although, the Hon'ble Supreme Court has used the word '*established income'* in its judgment rendered in the case of ***National Insurance Company Limited (supra)***, however, the Hon'ble Court itself has explained the meaning of '*established income'* to mean '*an income which is minus the income tax'*. Therefore, this shows that the Hon'ble Supreme Court has used the word '*established income'* only to clarify that the income of the deceased, if it exceeds the taxable limit would be taken after the deduction of the applicable taxes. Nothing more can be read in the word "*established income"* than what has already been clarified by the Hon'ble Supreme Court.

The objection of learned counsel for the respondent Insurance Company that in case the notional income is taken by the Tribunal in a case of a self-employed person, then the future prospects cannot be granted; because the income is not established by leading the documentary evidence; is not sustainable in law. The Hon'ble Supreme Court has not used the word '*established income'* as any specified term of the jurisprudence or as a rule of law of evidence. The Hon'ble Supreme Court has used this phrase only as a linguistic expression to clarify that income to be taken by the Tribunal/Court; for the purpose of calculation of benefit of future prospects; has to be an income assessed by the Tribunal/Court minus the applicable taxes. So far as the notional income assessed by the Tribunal is concerned; that also has to be treated as the '*established income'* for the purpose of future prospects. If the notional income of the deceased exceeds taxable

limits then income to be taken by the Tribunal for calculation of benefit of future prospects has to be the notional income minus the applicable taxes.

The benefit of future prospects cannot be denied on the ground that the Tribunal has assessed the income of the deceased on notional basis and that the claimants has not proved, by documentary evidence, the exact figure of that notional income. Once an income is assessed by the Tribunal for the purpose of calculation of the compensation then it cannot be said that the same income is not the established income for the purpose of grant or calculation of future prospects. The Tribunal cannot award any compensation to the claimants unless an income is proved before it as per the requirements of the Evidence Act, may be some approximation has to be done by the Tribunal on the basis of evidence. Needless to say that the Evidence Act permits the oral evidence as well.

As stated above, the Hon'ble Supreme Court has used the phrase *'Established Income*' only as a phrase of liguistic expression and not as any rule of evidence, except, as it has specifically clarified the same; as meaning the assessed income minus the tax. It is well established that the judgment of Constitutional Court is a precedent only to the extent it clearly expresses it to be so. It is never a precedence qua that what could be logically deducted from the judgment. Still further the judgment of a Court is not to be interpreted like a statute; so as to make an attempt to assign meaning to each and every word used in the judgment as part of judgment writing skills. No attempt can be made to find out the intention or to impute intention to the Court which writes a judgment; beyond what is expressly written or clarified by the Court. Anything more than that would be governed by the relevant statutory law. Hence the term '*Established Income*'

or '*Income Established*' used in the judgment of the Hon'ble Supreme Court has to be read in context of the provisions of Evidence Act. Linguistically '*Established*' would mean as - something in existence for long time. In terms of law of evidence it would mean as – something proved by evidence. The Evidence Act defines the term '*proved*' in Section 3 which is reproduced herein as under:-

> ***"Evidence"*** *– "Evidence" means and includes*
> *(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;*
> *(2) [8A][all document including electronic records produced for the inspection of the Court], such statements are called documentary evidence;*
> ***"Proved"*** *– A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.*
> ***"Disproved"****– A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.*
> ***"Not proved"–*** *A fact is said not to be proved when it is neither proved nor disproved.”*

So, it is clear from the statutory provisions that '*proved*' means a fact what a Court believes to exist on the basis of the evidence led before it. Evidence includes oral deposition as well. Needless to say that exact

figure of income of a person is not always a documented fact. In our country, as per the statistics of the Reserve Bank of India, more than 90% of total transactions of money are 'cash' transactions. Still further, even the established employees/business entities resort to cash payments to manipulate tax incidence. Even the labour intensive department of Government are found to be manipulating their Muster Rolls by repeatedly changing the name of the same labourer working with them; so as to deprive the said labourer of the benefit qua regularisation of his service in Government department under the Regularisation Policy of the State. In such a situation the poor person, who is compelled to receive the undocumented cash salary or who being self-employed is not earning enough to reach the taxable height of income, cannot be blamed for non-documentation of the exact figure of his income. In such a situation, the claimants can prove the employment or self employment of the deceased even by the oral evidence and through oral evidence can lay down a factual basis for an inference qua the particular figure of the income of the deceased. After appreciating that oral evidence, showing the attendant facts and circumstances of the case; and by taking judicial notice of some facts, the Tribunal comes to believe the particular figure of the income of the deceased, what sometimes is also called the notional figure of income of deceased. However, this figure is not a gratuitous figure arbitrarily arrived at by Court just to oblige the claimants. It is a figure proved before the Court as per the Evidence Act. After all the oral evidence is also the evidence and the presumptions and judicial notice of certain facts are also the statutory tools of evidence.

In view of the above, once the Tribunal has awarded the

compensation by taking the so called notional income, it believes the income of the deceased to be existing at that level. Needless to say that as per the Act, the fact is said to be proved when the Court believes it to be existing and if the Tribunal is granting compensation on the basis of the said notional income, it cannot be said that the Tribunal does not believe the same to be existing. Hence, even the income of the deceased assessed by the Tribunal on so called notional basis has to be treated as the established income for grant and calculation of benefit of future prospects. If the respondent insurance company desired the Tribunal not to believe the existence of income, as taken by the Tribunal, then it could have '*disapproved'* the factum by leading the evidence, as required under the Act or it would have been within its right to bring the factum of the income within the term '*not proved'* as defined under Section 3 of the Evidence Act; by leading some evidence or by discrediting the evidence of the claimants. However, the Insurance company has not lead any evidence either to disapprove the income believed by the Tribunal nor has it lead any evidence to bring the income believed by the Tribunal within the zone of '*not proved'*. Hence, by any means, the income taken by the Tribunal even if the same is taken on the notional basis, has to be taken to be the established income in the present case; for the purpose of grant and calculation of future prospects in terms of the judgment of the Hon'ble Supreme Court rendered in the case if ***National Insurance Company Limited(supra***). Hence the claimants are entitled to the benefit of enhancement on account of future prospects @ 10% as per the mandate of the Hon'ble Supreme Court of India in the case of ***National Insurance Company Limited(supra)***. Accordingly, the loss of dependency of the claimants is assessed at ₹10,000/- 2500 (10,000 x ¼) = ₹

7500/- per month. Annually, the same would come to ₹7500 x 12= 90,000/-. On this amount the claimants shall be entitled to 10% increase on account of future prospects. Hence the total compensation on account of loss of dependency comes to ₹ 90000 + 9000(90000 x 10%) = 99000/- per annum.

The next argument of learned counsel that the multiplier as applied by the Tribunal has to be brought to less than 13, does not appeal to this Court. The Hon'ble Supreme Court in the case of ***Sarla Verma vs. Delhi Transport Corporation and another, 2009 ACJ-1298,*** which has been upheld in the latest judgment of the Hon'ble Supreme Court in case of ***National Insurance Company Limited(supra),*** has laid down that the multiplier for the age group of 46 to 50 years would be 13 and multiplier for the age group of 51 to 55 years would be 11. No multiplier is prescribed in between. Since the deceased had, admittedly, not reached the age of 51 years, therefore, the applicable multiplier has rightly been taken by the Tribunal at 13. Therefore, the multiplier of 13 is held to be applicable in the case. So the total loss of dependency to the claimants come to ₹ 99000 x 13 = ₹12,87,000/-.

This Court also finds the force in the argument of learned counsel for the appellants that the amount awarded on account of loss of consortium and funeral expenses are on lower side. Even as per the latest judgment of the Hon'ble Supreme Court rendered in the case of ***National Insurance Company limited(supra)*** the standardized amounts have been laid down. Accordingly, the claimant is held to be entitled to ₹40,000/- on account of loss of consortium and ₹15,000/- on account of funeral expenses. Still further, learned counsel for the appellants has rightly pointed out that

no compensation has been awarded on account of loss of estate. The claimants are also held entitled to the same. Accordingly, ₹15,000/- is awarded to the claimants on account of loss of estate as well.

No other argument was raised by learned counsel for the parties.

In view of the above, the claimants are held entitled to the compensation as given below:-

Sr. No.	***Heads***	***Amount(₹)***
1	**Loss of Dependency**	**12,87,000/-**
2	**Loss of Estate**	**15,000/-**
3	**Loss of Consortium**	**40,000/-**
4	**Funeral Expenses**	**15,000/-**
	Total	**13,57,000/-**

The interest on the said amount is retained at the same rate as was awarded by the Tribunal.

In view of the above, the present appeal is allowed and the award of the Motor Accidents Claims Tribunal, Chandigarh is modified to the above extent.

22nd November, 2017 **[Rajbir Sehrawat]**
Judge

Shivani Kaushik

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*