

HARBANS KAUR v. HARDEEP SINGH, (2022-1)205 PLR 385 ,

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Arun Monga.

HARBANS KAUR and others – Appellants,
versus

HARDEEP SINGH and others – Respondents.

FAO-2961-2019 (O&M)

Motor Vehicle Act, 1988 (59 of 1988) Section 166 – Deceased aged 58 years – Was left with one year service – Pension and other retiral benefits are earned by an employee during and for the period of his actual service rendered on pensionable post – They are earned during the period of actual service – Only their payment is deferred till retirement – There seems no justification or reason to take into account such deferred payments of retiral of deceased while assessing his earnings from private work post retirement and for computing the claimants' entitlement to compensation for his death in vehicular accident – He would have the capacity, ability and potential to take up some other gainful private work from which he could earn about equal to his last drawn net carry home salary.

Cases referred to:-

1. 2014 PLRonline 0101 (SC), 2014(15) SCC 450, Saraladevi v. Divisional Manager, Royal Sundaram Alliance Insurance Co. Ltd.
2. 2013 PLRonline 0101, (2013) 15 SCC 45, Puttamma v. K.L.Narayana Reddy.
3. (2009-3)155 PLR 22 (SC), Sarla Verma v. Delhi Transport Corporation.
Mr. Ravinder Arora, for Mr. Neeraj Khanna, for the appellants. Mr. Naveen Chopra, for the respondent-Insurance Company. (Presence marked through video conference).

Arun Monga, J. (Oral) – (28th October, 2021) – Appellants before this Court are the claimants seeking enhancement of compensation granted to them vide award dated 02.02.2019 which is under challenge to the limited extent of seeking modification claiming that the MACT has wrongly applied the split multiplier.

2. Reliance has been placed on the judgments rendered by the Apex Court in Saraladevi v. Divisional Manager, Royal Sundaram Alliance Insurance Co. Ltd. 1 reported as 2014 PLRonline 0101 (SC), 2014 (15) SCC 450 and Puttamma v. K.L.Narayana Reddy 2 reported as 2013 PLRonline 0101, (2013) 15 SCC 45 .
3. Learned counsel for the appellants, *inter alia*, argues that in view of the judgments, *ibid* split multiplier is not applicable in the present case and the computation ought to have been carried out applying the parameters laid down in Sarla Verma v. Delhi Transport Corporation and another, 3 reported as (2009-3)155 PLR 22 (SC).
4. On the other hand, learned counsel for the insurance company submits that the learned Tribunal fell in error in not deducting the income. Learned counsel further argues that the allowances like rural allowance, load allowance, risk allowance in

performing his duties to the tune of Rs.4,000/- were rightly deducted from the income of the deceased. Thus the net carry home salary after deduction of allowance and income tax should have been taken to be Rs.35,923/- (Rs.58,000 – Rs.4,000 – Rs.22,077). It is further contended that a sum of Rs.40,000/- already given to the wife for loss of consortium needs to be deducted from total sum of Rs.1,20,000/-.

5. Succinct facts as noted by the Tribunal are as below:-

The brief facts of the claim petition as pleaded by the claimants are that on 05.07.2018 deceased Balvir Singh was going back to his home from Agol Electricity Grid after finishing his duty hours while driving his motor cycle make Discover bearing registrationNo.PB34-A-1114. He was driving his motor cycle while observing all traffic rules and regulations. Krishan Singh alongwith one Sukhdarshan Singh were also coming back from Paydun on their separate car and deceased Balvir Singh was going a little ahead of them. At about 8.30 p.m., one car bearing registration No. PB-11-CH-4871 came from Bhadson side being driven by its driver i.e. respondent No.1 in a rash and negligent manner. Driver of the car brought the same on wrong side of the road while over taking another vehicle and struck the same against motor cycle of deceased from front. On account of that, motor cycle of the deceased got damaged and deceased fell down on the road. He received multiple grievous injuries on his head, legs and other parts of the body and died at the spot. Postmortem on the dead body of deceased was conducted by the Doctors of Civil Hospital, Nabha on 06.07.2018. The offending car was being driven in such a negligent manner that it dragged the motor cycle of deceased for some distance and even Krishan Singh saved his car from accident with difficulty. After the accident, driver of the offending car fled away from the spot alongwith the same. Krishan Singh son of Dalbara Singh made statement to the Police regarding the accident and on the basis of that FIR No.58 dated 06.07.2018 under Section 279, 304-A, 427 of IPC was registered with Police Station Bhadson against respondent No.1. The accident had taken place solely on account of rash and negligent driving of respondent No.1 while driving the offending car.

It has been further pleaded that deceased was 57 years of age at the time of his death and was working as Lineman with Punjab State Power Corporation Limited, Sub Division Bhadson. At the time of his death, he was drawing salary of Rs.70,000/- per month and was an income tax assessee. He was the sole bread winner of the family and all the claimants were dependent upon his income. Claimants have suffered huge loss on account of his untimely death and their future has become dark. Claimants have also spent an amount of Rs.1 lac on trans-portion of dead body of deceased and on his last rites. Thereby, the claimants have claimed compensation to the tune of Rs.80,00,000/- alongwith interest @ 12% per annum from the date of filing of claim petition till realization."

6. Record shows that the argument of learned counsel for the insurance company that the income tax of Rs.22,077/- is liable to be deducted per month is factually and legally not tenable. As per form 16 referred to in the award as Ex P-22, the amount of Rs. 22,077/- was the income tax liability for the entire year. The learned Tribunal deducted Rs.4,000/- as the monthly income tax while assessing the monthly income of the deceased at Rs. 54,000/-. The contention of learned counsel for the respondent-Insurance Company with regard to deduction of Rs.40,000/- towards loss of

consortium already given to the wife, will be taken care of in the latter part of this order, as the amount already awarded by the Tribunal is being deducted from the total entitlement of the appellants.

7. On perusal of the impugned award, I am of the opinion that the learned Tribunal had erred in assessing the monthly income of the deceased. The learned Tribunal noted that Rs. 58,062/- was the last pay drawn by the deceased. It included Rs. 1,329/- for rural allowance; Rs. 100/- for risk allowance; Rs. 250/- for mobile allowance and Rs. 600/- for load allowance per month. It observed that these allowances were being paid to him for performing his duties and cannot be considered as his monthly income. Further, it noted that as per income tax computation form 16, the deceased was paying Rs. 22,077/- as income tax. Out of the gross salary of Rs. 58,062/- of the deceased, the learned Tribunal deducted the amounts of these allowances and of the income tax and held that the net income of the deceased was approximately Rs. 54,000/- per month. Further, the learned Tribunal noted that the deceased would have retired 31.08.2019 on attaining the age of 58 years. He was left with only one year of service. The learned Tribunal observed that after retirement, he was to get pension, therefore, the amount of compensation could not be calculated on the basis of last pay drawn; that his family was also getting family pension after his death and the amount reduced on account of his death, was to be used by him for his own expenses. Though the learned Tribunal also noted that even after retirement, the deceased was not to sit idle and he must have gotten some gainful employment. Keeping in view the qualifications and experience of the deceased, the Tribunal held that on such re-employment after retirement, he would have got salary of Rs. 15,000/- per month. It allowed 15% addition thereto for future prospects and held that the claimants were entitled to compensation of Rs. 15,36,000/- i.e. $(54,000 \times 2/3 \times 12 \times 1 + 17,250 \times 2/3 \times 12 \times 8)$ besides Rs. 15,000/- for loss of love and affection and loss to estate and Rs. 15,000/- for funeral expenses.
8. To my mind, Rs. 250/- for mobile allowance, may legitimately be treated as a reimbursement of the expenses for official use of the mobile phone by the deceased. The same would not constitute his own income. This could be fairly and reasonably deducted out of his gross monthly income of Rs. 58,062/. Rest of the aforesaid allowances namely Rs. 1,329/- for rural allowance ; Rs. 100/- for risk allowance; and Rs. 600/- for load allowance were certainly part of his own income and ought not to be deducted from his income. Accordingly, I am inclined to hold that the monthly income of the deceased at the time of death was Rs. 57,812/- i.e. Rs. 6,93,744/- say Rs. 6,93,745/- per annum. His tax liability on annual income of Rs. 6,93,745/- at the then prevailing rate would be Rs.53,299/- and the net carry home annual income would be Rs.6,40,446/- i.e. Rs.53,370/- per month.
9. Moving now to the capacity, ability and the potential of the deceased, for earnings which he could/would have generated from private work post retirement and for future prospects. He was of 57 years' age. Hale and hearty at the time of his accidental death on 05.07.2018. His net carry home monthly income from salary at the time of death was Rs. 53,370/- per month, besides the pension/family pension and other retiral benefits earned while in service.
10. Pension, family pension and other retiral benefits are earned by an employee during and for the period of his actual service rendered on pensionable post. They are earned

during the period of actual service. Only their payment is deferred till retirement. There seems no justification or reason to take into account such deferred payments of retiral benefits of Balvir Singh deceased while assessing his earnings from private work post retirement and for computing the claimants' entitlement to compensation for his death in vehicular accident. In fact, doing so would be against the object, intent and spirit of the relevant beneficial provisions of the Motor Vehicles Act. Let us suppose for a moment that the deceased was selfemployed and his post tax income from self-employment was also 53,370/- per month. In that case, for calculating compensation, no reduction would be made from his income after the age of 58 years for the expected period of his remaining working life. The same logic, principle and analogy ought to apply herein. The heirs of the deceased ought not to put to discount, simply because at the time of death, he was holding a pensionable post.

11. The income of the deceased generated from private work undertaken after retirement would not be affected by his entitlement to pension and/or of the eligible member of his family, to family pension. In this view of the matter, the deferred payments of retiral benefits like pension and family pension actually earned before retirement, have to be ignored while ascertaining the ability, capacity and potential income of the deceased generated from private work post retirement and for future prospects.
12. The deceased had joined service as Assistant Line Man in 1987 and since then, had been working in the PSPCL from till he died on 05.07.2018. Entitlement to retiral benefits for the service rendered in PSPCL would have nothing to do with and would not affect the capacity and ability of the victim of the accident to undertake some gainful private work and his earnings therefrom post retirement. In other words, his earnings from such private work post retirement would wholly be independent of the entitlement to retiral benefits. Considering his long experience from 1987 to 2018 and skill in electrical work thereby acquired, it would be fair and reasonable to assume that even post reretirement at age 58 years, he would have the capacity, ability and potential to take up some other gainful private work from which he could earn about equal to his last drawn net carry home salary of Rs. 53,370/- per month. It cannot be said that on completion of his tenure and retirement from employment in the PSPCL on 31.08.2019, the deceased would have lost his ability, capacity and potential to undertake private work after retirement and earn therefrom, so as to suddenly fall from fall from Rs. 53,370/- to Rs. 15,000/- per month. In my opinion, the learned Tribunal erred and grossly under-estimated the income of Balvir Singh deceased from private work post-retirement at Rs. 15,000/- per month.

13. In the light of above circumstances, compensation payable to the claimants is computed as under:

Deceased Balvir Singh

Date of accident/death 05.07.2018

Age 57 years

Net Post Tax Monthly Income at the time of Death Rs. 53,370/-

Increase 15% for future prospects $53370 \times 15/100 = \text{Rs. 8005}$ (Rs. 8005)

Total Monthly Income Rs. 61375/-

Deduct 1/3rd of Rs. 61,375/- for personal expenses of the deceased Rs. 20,458/- Rs. 20,458/-

Monthly dependency of three claimants 61375- 20458 = Rs. 40,917
Annual dependency of the claimants 40,917/- x 12 = Rs. 4,91,004/- Rs. 4,91,004/-
Loss Consortium for three claimants @ Rs. 40,000/- Rs. 1,20,000/-
Funeral expenses Rs. 15,000/-
Loss of estate Rs. 15,000/-
Total entitlement of the appellants 44,19,036 + 1,20,000/- + 15,000/- + 15,000/- Rs. 45,69,036/-

Compensation awarded by the Tribunal Rs. 16,06,000/-
Enhanced amount of compensation to be paid Rs. 45,69,036/- - 16,06,000/- = Rs. 29,63,036/- Rs. 29,63,036/-

14. Accordingly, the impugned award of the learned Tribunal is modified in terms of the above computations. Revised compensation shall be payable to the claimants along with interest @ 7% per annum from the date of filing of the claim petition till the actual date of payment. Revised compensation amount be disbursed to the claimants in terms of the apportionment as already determined by the Tribunal.
15. Disposed of in above terms.
R.M.S. – Appeal disposed of.