

FAO-3236-2007

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

FAO-3236-2007

Decided on : 17.08.2023

Daya @ Dayawanti

. . . Appellant(s)

Versus

Arjun and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Bhisham K. Majoka, Advocate
the appellant(s).

Mr. R.C. Kapoor, Advocate
for respondent No.3 – Insurance Company.

SANJAY VASHISTH, J. (Oral)

1. The present appeal has been filed by the appellant/petitioner/claimant (hereinafter referred as 'claimant') in MACT Case No. 62 of 2005, dated 19.04.2005, for modification of award dated 28.02.2007, passed by Ld. Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as 'Ld. Tribunal') by way of seeking enhancement of amount of compensation, on account of death of deceased - Sarwan Kumar.

2. There was only one claimant in the MACT case that is Smt. Daya alias Dayawanti, who is widow of the deceased – Sarwan Kumar. In the present appeal before this Court, she is seeking enhancement of compensation awarded by Ld. Tribunal on account of death of her husband Sarwan Kumar in a motor vehicular accident.

3. Briefly stated facts of the case are that on 10.01.2005, at 05:00 p.m., deceased left for Delhi in his truck bearing No. HR-38-BG-5027 from Punjab. Near brick kiln of village Sambli on Dhand to Karnal Road, at about

09:00 p.m., one canter bearing registration No. HR-64-0903 coming on the left side of the road dashed into the truck of the deceased. Sarwan Kumar died on the spot. It was contended that the said canter was being driven in a rash and negligent manner.

4. Claimant filed a claim petition under Section 166 and Section 140 of the Motor Vehicles Act, 1988 for seeking compensation of Rs.20,00,000/- on account of death of her husband in the motor vehicular accident. However, after going through the record, appreciating the evidences, examining the witnesses and hearing the arguments of both the sides, Ld. Tribunal assessed the age of the deceased as 49 years and 8 months, his monthly income as Rs.3,500/-, deducted 1/3rd on account of his personal expenses, applied the multiplier of 13, granted Rs.5,000/- as spousal consortium, Rs.10,000/- as funeral expenses and accordingly, awarded total compensation to the claimant to the tune of Rs.3,79,000/- payable by respondents severally and jointly with interest @7.5% per annum from the date of filing of the petition till its actual realization.

Appellant/Petitioner/Claimant has filed the present petition, seeking enhancement of the compensation as awarded by the Ld. Tribunal.

5. While addressing arguments, Counsel for the appellants submits that the Ld. Tribunal has erred in determining the monthly salary of the deceased - Sarwan Kumar; failed to enhance the income on account of future prospects; has deducted personal expenses on the higher side and failed to grant any compensation on account of loss of estate.

6. On the other hand, Ld. Counsel for Respondent No.3 – Insurance Company, submits that the Ld. Tribunal has rightly determined the monthly salary of the deceased as per prevailing wages of labourers at

the time of accident and there is no need to interfere in the amount of compensation awarded by the Ld. Tribunal.

7. This Court is of the view that income of the deceased who was a truck driver should have been assessed in accordance with the DC rates prevalent at the time of the accident which were Rs. 5,812.75/- per month as on date of accident i.e. 10.01.2005.

8. Learned counsel for the appellant/claimant vehemently argues that in view of the law laid by the Hon'ble Apex Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77 : Law Finder Doc ID #188882**, there being only one dependent of the deceased that is widow of the deceased, a deduction of half (1/2) on account of personal expenses of the deceased should be made. This court has thoroughly examined the verdict of the Hon'ble Apex Court in the aforementioned '**Sarla Verma**' case (*supra*) and observes that there is no explicit indication regarding the deduction to be applied in instances where the deceased was married and has only one dependent. Thus, in such circumstances, it is the discretion of the court to apply the deduction according to the peculiar facts & circumstances of the case.

In the case in hand, sole claimant is a widow. With the unfortunate demise of her husband, the widow has been thrust into a position of considerable responsibility, as she now must not only ensure her own well-being but also shoulder the care and support of her family. This transition would have brought about an array of challenging responsibilities to her, signifying a profound and demanding phase of adaptation and resilience.

A homemaker shoulders a myriad of responsibilities that

encompass a diverse range of tasks. From managing household chores to nurturing relationships and maintaining a harmonious living environment, their role is ceaseless and demanding. Operating tirelessly around the clock, a homemaker's dedication is undeniable. The contribution of a homemaker to the intricate fabric of daily life is immeasurable and deserves profound acknowledgment.

Thus, being a homemaker, widow – Daya @ Dayawanti has to not only look after herself, but also manage her home too. If a deduction of $\frac{1}{2}$ (half) is made to the income of the deceased, it will bring profound challenges in the life of the widow and will cause extreme hardship to her.

Thus, in the interest of justice, this Court is of the view that deduction for personal expenses in the present case should be $\frac{1}{3}$ rd of the income of the deceased and sole claimant – widow should be entitled to the remaining $\frac{2}{3}$ rd of the income of the deceased.

9. Rest of the parameters are assessed and calculated in accordance with the judgment of this Court titled as ***Sangtari Muleem v. Karnail Singh, (FAO No. 2538 of 2006, D/d. 07.07.2023) : Law Finder Doc Id # 2270482***, which is in consonance with the settled proposition of law laid down by the Apex Court in ***National Insurance Company Limited v. Pranay Sethi and Ors., 2017(4) RCR (Civil) 1009 : Law Finder Doc Id #918174***, and ***Smt. Sarla Verma's case (supra)*** and ***Smt. Anjali and others v. Lokendra Rathod and others, 2023 (1) R.C.R. (Civil) 229 : Law Finder Doc Id #2081014***. For the sake of convenience, a comparative table of the compensation as assessed and calculated by Ld. Tribunal and this Court is produced below in a tabular form:

Sr. No.	Head	Compensation awarded by Ld. Tribunal	Compensation Awarded by High Court
1.	Income	Rs. 3,500/- p.m.	Rs.5,812.75/- p.m.
2.	Future Prospects	NIL	Rs.1453/- (i.e. 25% of the income)
3.	Deduction towards personal expenses	Rs. 270/- (1/3 rd of Rs. 3,500/-)	Rs.2,422/- [i.e. 1/3 rd of (Rs. 5,812.75/- + Rs. 1,453/-)]
4.	Total Annual Income	Rs.28,000/- (Rs. 2,333.33 x 12)	Rs. 58,116/- [i.e. 2/3 rd of (Rs. 5,812/- + Rs. 1,453) x 12]
5.	Multiplier	13	13
6.	Loss of Dependency	Rs.3,64,000/-	Rs.7,55,508/- (i.e. Rs. 58,116/- x 13)
7.	Funeral Expenses	Rs.10,000/-	Rs.25,000/-
8.	Loss of Estate	NIL	Rs.20,000/-
9.	Loss of Spousal Consortium	Rs.5,000/-	Rs.44,000/-
10.	Loss of Parental Consortium to each of the three children	NIL	NIL
11.	Loss of Filial Consortium to parents i.e. mother and father of the deceased	NIL	NIL
12.	Total Compensation to be Paid	Rs.3,79,000/-	Rs.8,44,508/-

10. Counsel for the appellants further submits that the rate of interest awarded by the Ld. Tribunal i.e. at 7.5% per annum from the date of filing of the claim petition till its realization is worth to be maintained. However, learned counsel appearing on behalf of respondent No.3 - Insurance Co., submits that the rate of interest should not be over the awarded amount and therefore, it should not be more than 6% per annum.

11. I have gone through the judgments cited by counsel for the appellant (petitioner/claimant) and thus, I deem it appropriate to maintain the rate of interest at 7.5% per annum.

12. Thus, keeping in view the aim of this beneficial legislation of

FAO-3236-2007

- 6 -

providing relief to the victims or their families, the total compensation payable to the appellant (petitioner/claimant) is **Rs.8,44,508/-** along with interest at **7.5%** per annum from the date of filing of claim petition till the date of payment of compensation to the appellants (petitioner/claimant).

13. Needless to mention that out of the total payable compensation amount, already paid amount (if any) in compliance to the impugned award would be adjusted.

Therefore, by partly modifying the award, appeal is allowed with the terms indicated here-above.

**(SANJAY VASHISTH)
JUDGE**

August 17, 2023

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No