

Kulwinder Kaur & Ors. Vs. Parshant Sharma & Anr.

Civil Appeal No. 820/2019 · Supreme Court of India · 2025-08-08 · K. Vinod Chandran · N.V. Anjaria · F2J-C-1589

Full judgment text

Kulwinder Kaur & Ors. Vs. Parshant Sharma & Anr.

[Civil Appeal No. 820/2019]

N.V. Anjaria, J.

1. Heard learned advocates for the respective parties.
2. The appellants-herein are the original claimants, who by filing the present appeal, have taken exception to the judgment and order dated 08.08.2017 of the High Court of Punjab & Haryana in FAO No.6692 of 2010 to the extent that the High Court, even while enhancing the compensation in respect of accidental death, disregarded the count of future prospects' in computing the compensation payable to the appellants/claimants/heirs.
3. While noticing the crux of the controversy as above, the basic facts may be stated. In an accident which took place on 31.08.2007 at about 3.00 a.m. in the area of Nirmal Kutia Chowk, Karnal one Rajinder Singh Mihnass died, who happened to be the husband of claimant No.1 and father of other claimants who are the daughter and son respectively.

The deceased was travelling in a car bearing registration No.DL-3C-AP-5711 along with relatives named Devender Singh and Kamaljeet Kaur going to Hoshiarpur from Delhi. The car was driven by Devender Singh. The deceased was sitting in the front seat of the car. A Swaraj Mazda truck bearing registration No.HR-46-A-4816 which was stated to be driven rashly and negligently, struck with the car. The accident resulted into death of said Rajinder Singh Mihnass aged 31 years.

3.1 It was the case that the deceased had been working as a driver and running a Transport company in the name and style of West End Express Inc. in the United States of America (USA), claiming to be earning \$ 9,600/- equivalent to Rs 4,25,000/- per month in Indian rupee. The deceased was a U.S. national as was established from the evidence on record including copy of permanent resident card of USA (Exb. P-2), copy of passport of the daughter and letter (Exb. P-8) from the Company that he was employed as owner/operator/driver for the said West and Express Company earning in dollars. The claimants/heirs filed claim petition under Section 166 of the Motor Vehicles Act.

3.2. The Motor Accident Claims Tribunal (hereinafter referred to as "Tribunal") applied multiplier of 16 having regard to the age of the deceased to be 31 years on the date of the accident. The Tribunal, however, on the score of income, took the view that the evidence produced by the claimants would suggest that the income of the deceased could not be assessed beyond Rs.5000/- per month. The deceased was self-employed and it was reasoned by the Tribunal that there was no material on record to prove as to what was the daily wages paid in the USA. The Tribunal accordingly taking the income at Rs.5000/- per month, deducting the personal expenses and applying the multiplier as above determined the compensation.

3.3. In the final analysis, the Tribunal held that the claimants would be entitled to a total compensation of Rs.7,80,000/- with interest @ 6% from the date of filing of the petition till final realization, failing which the further interest @5% was provided to be payable. The compensation was calculated on the basis of Rs.60,000/- being the yearly income minus 1/3rd personal expenses multiplied by a multiplier, further adding the amounts of Rs.10,000/- each towards funeral expense, loss of consortium and loss of love and affection as well as for transportation of dead body and miscellaneous charges, including Rs.1,00,000/- for travelling expenses from U.S. to India.

3.4. The High Court, in the appeal preferred by the appellants/claimants, was of the view that in calculating the amount of compensation, the Tribunal overlooked the documents such as the income tax record bearing social security number of the deceased as also the salary certificate exhibit P-8 which indicated the income to be \$2150 per week which was rejected by the Tribunal on the ground that it did not bear the stamp of the Consulate General of India.

3.5. Disagreeing with the rejection of the said document, the High Court observed that it was clear from the salary certificate, etc. that the deceased was a driver, his income tax returns showed the social security number which was verified by the American Embassy. It was further observed that as per the United States Department of Labour, Wage and Hour Division, the minimum wages earned by the employee in U.S. during 8 hours was \$ 7.25 per hour and on that basis, if the 8 hours working is taken as a base, any worker who draws \$ 58 per day which would come to \$170 per month equivalent to Rs.78,300/- per month. Taking income to be Rs.78,300/- per month, the High Court awarded the compensation enhancing the same from Rs.78,300/- per month to Rs.1,17,20,200/-.

3.6. In the present appeal which is filed by the claimants, the respondents attempted to submit that the aforesaid assessment by the High Court to enhance the figure of the income was not justified inasmuch as the authentication made by the Consulate General by itself did not suggest that the content of the said document was correct and acceptable and that it was specifically mentioned that the Consulate did not accept its responsibility about the content.

It was submitted that the document suggest that the deceased was a driver in the said West End Express Inc., and was not the owner. By raising these contentions, it was submitted that taking the earning of the deceased at \$ 2150 per week was exaggerated and that the High Court committed an error in taking the higher income than adopted by the Trial Court.

3.7. Dealing with the aforesaid aspect at this stage itself, this Court does not find any substance in the above submission, having gone through the findings of the High Court. The High Court properly appreciated and took into account the evidence to arrive at the finding about income computation. Even otherwise, the present is an appeal by the claimants. No cross objections are filed by the other side-the insurer. This Court is inclined to maintain the assessment of income done by the High Court and the figure arrived at in that respect, as proper and evidence-based.

4. Adverting to the case and contention of the appellants-herein that the High Court did not give the benefit of 'future prospects' component. It is the case that the denial of the said benefit by the High Court was on the basis of the decision of this Court in Chikkamma and another v. Parvathama and another¹ wherein this Court refused the claim towards the future prospects' in respect of self-employed person on the ground that such issue was discussed by the larger Bench.

It was pointed out that the Constitution Bench Judgment in National Insurance Company v. Pranay Sethi², has laid down that addition of 40% of the established income shall have to be counted towards 'future prospects'. In addition to calculating the benefit of Pranay Sethi (supra) in regard to the future prospects' component, the appellants also submitted that the multiplier of 17, instead of 16 ought to have been applied.

5. The multiplier of 16 is correctly applied and the same is in consonance with what is stated in Pranay Sethi (supra). Therefore, the submission about taking the higher figure of multiplier to 17 is stated to be rejected. However, as far as the case of the appellants regarding grant of benefit of future prospects is concerned, the same has merit. The issue of additional future prospects' came to be discussed and delineated by this Court in Pranay Sethi (supra) in paragraph 53 onwards, in which the Constitution Bench considered the parameters to be applied towards granting of future prospects' benefit in case of a salaried person as also in respect of a person who is self-employed.

5.1. With regard to the conferment of benefit in respect of future prospects, Pranay Sethi (supra) stated as under.

"Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time.

Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary."

(para 57)

5.1.1. The Court explained and observed further:

"But not to apply the principle of standardisation on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable.

The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."

(para 57)

5.2 While awarding the compensation without applying the future prospects' component, the High Court in its impugned judgment calculated the total compensation to arrive at the figure of Rs.1,17,20,200/- as per the following.

Heads of claim

Income 78300

Less Deduction (1/3) 58725 (1/4th)

Multiplicand (annualized by multiplying 12) 7,04,700

Multiplier 16

Loss of dependence 1,12,75,200/-

Medical Expenses & Transportation 110000

Loss of Consortium 1,00,000/-

Loss of love and affection @ 1,00,000/- to child & Rs.50,000 to parents 1,00,000/-

Loss of estate 10,000/-

Funeral expenses 25,000/-

Total 1,17,20,200/-

5.3. When the decision in Pranay Sethi (supra) hold the field today, the law laid down therein has to be applied to give benefit of future prospects' to the appellants while determining the compensation. The rectification in the compensation amount awarded by the High Court by enhancing the same with inclusion of future prospects' benefit and by further applying the principles for amounts awarding under the conventional heads as per the parameters laid down in Pranay Sethi (supra) is required to be adopted.

5.4. It deserves to be observed at this stage that the deceased was national of United States. Thus, he belonged to a foreign country and was found to be self-employed in that country. There will be no gainsaying that assessing the 'future prospects' of a person selfemployed in a foreign country like United States, compared to a person in this country, would become difficult for the simple reason that the socio-economic-political conditions in any foreign country would be different.

Even as this Court is not oblivious to the said aspect, in order to determine the just compensation to a person who died in an accident occurred in India, the dictum of law in Pranay Sethi (supra) shall have to be followed and applied specially when no material evidence is offered to determine the future prospects in the foreign country. Accordingly, the Court is inclined to extend the benefit of future prospects' component for the compensation payable as per the principles in Pranay Sethi (supra).

5.5. As observed hereinabove, as per the decision in Pranay Sethi (supra), as the deceased was aged 31 years, 40% addition has to be made in the established income towards future prospects'. In the second place, as observed in Pranay Sethi (supra) the reasonable figures under the conventional heads namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. These figures have to be applied while coming to the compensation in the said heads.

5.6. The dependence of the deceased are wife, the daughter and the parents, therefore, for each of them Rs.40,000/- will be the part of compensation towards loss of consortium amounting to Rs.1,60,000/-.

5.7. Therefore, applying the law in Pranay Sethi (supra) and extending the benefit of future prospects' component as also towards the conventional head, the revised compensation would be as under.

Heads As Revised

Loss of Dependency 78,300/- 9,13,600/- $9,13,600 \times 40\% = (3,75,840)$ $3,75,840 \times 12 = 13,15,440/-$
 $13,15,440 - \frac{1}{4} (3,28,860) = 9,86,580/-$ $9,86,580/- \times 16 = 1,57,85,280/-$

Loss of Consortium [40,000/- X 4] 1,60,000/-

Loss of estate 15,000/-

Funeral expenses 15,000/-

Transportation + Medical Expenses NIL

TOTAL 1,60,15,280/-

5.8. The High Court awarded Rs. 1,17,20,200/-. The claimants would be entitled in law to be granted total compensation of Rs. 1,60,15,280/- as per the above calculation along with benefit of future prospects. Thus, the additional compensation of Rs. 42,95,080/- with 6% interest as originally awarded to be calculated till the date of deposit of the additional amount, now be payable to the appellants-claimants.

6. In that view of the foregoing discussion, the present appeal is partly allowed by granting additional compensation to the claimants as above to the tune of Rs. 42,95,080/- with interest as above. The respondent-Insurance Company shall deposit the said amount of additional compensation with interest @ 6% within four weeks from today with the Tribunal, upon which the claimants shall be entitled to withdraw the same after undergoing the process of verification and identification before the Tribunal.

7. The present appeal stands allowed in the aforesaid terms and to the said extent. Pending application(s), if any, shall stand disposed of.

.....J. [K. Vinod Chandran]

.....J. [N.V. Anjaria]

New Delhi;

August 08, 2025.

1 Civil Appeal No.3409/2017 dated 28.02.2017

2 (2017) 16 SCC 680

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