

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 404 of 1999

Appellant :- Smt. Sukh Devi And Others

Respondent :- Smt. Rafiq And Others

Counsel for Appellant :- Madhav Jain

Counsel for Respondent :- B.N. Agarwal

Hon'ble Saral Srivastava,J.

Order on Order Sheet.

In view of the office report, service of notice upon respondents is deemed sufficient.

Order on Appeal.

1. Heard learned counsel for the claimants/appellants, however, no one appears on behalf of the respondents even in revised call.
2. The present appeal has been preferred by the claimants/appellants for enhancement of compensation against the judgement and award dated 21.01.1999 passed by the Motor Accident Claims Tribunal/XIIth Additional District Judge, Agra in M.A.C. Case No.1104 of 1997.
3. Challenging the award, learned counsel for the claimants/appellants has contended that the accident had taken place on 18.11.1997 and it is stated that the deceased was running a tea shop and used to earn Rs.4,000/- per month, but the Tribunal has erred in law in holding the income of the deceased to be Rs.1250/- per month i.e. Rs.15,000/- per annum. It is submitted that even if there was no proof of income of the deceased on record, the Tribunal ought to have taken at least Rs.1500/- per month i.e. Rs.18,000/- per annum as income of the deceased in computing the compensation. It is further submitted that no amount towards future prospect has been awarded by the Tribunal, whereas considering the age of the deceased i.e 36 years, the claimants/appellants are entitled to 40% towards future prospect in view of the judgement of Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others 2017 (16) SCC 680***. It is further contended that there were seven dependants upon the deceased, therefore, considering the judgement of Apex Court in the case of ***Sarla Verma and others Vs. Delhi Transport Corporation and others 2009 (6) SCC 12***, the

Tribunal should have deducted 1/5th towards personal expenses of the deceased instead of 1/4th. Lastly, it is submitted that a very meagre amount of Rs.2,000/- has been awarded towards non-pecuniary damages, whereas the Tribunal ought to have awarded Rs.20,000/- towards loss of consortium, funeral expenses and love and affection instead of Rs.2,000/-.

4. I have considered the submissions advanced by the learned counsel for the claimants/appellants and perused the record.

5. The submission of learned counsel for the claimants/appellants with regard to the income of the deceased has got force, therefore, this Court holds that the compensation shall be computed by taking the income of the deceased to be Rs.1500/- per month i.e. Rs.18,000/- per annum in place of Rs.15,000/- per annum.

6. The submission of learned counsel for the claimants/appellants in respect of future prospect has got force in view of the judgement of Apex Court in the case of **Pranay Sethi (supra)**, and thus, following the aforesaid judgement of Apex Court, this Court considering the age of the deceased holds that the claimants/appellants are entitled to 40% towards future prospect and further, non-pecuniary damages awarded by the Tribunal is enhanced from Rs.2,000/- to Rs.20,000/-.

7. The submission of learned counsel for the claimants/appellants with regard to deduction of 1/5th towards personal expenses of the deceased has substance in view of the judgement of Apex Court in the case of **Sarla Verma (supra)**. Thus, it is provided that 1/5th should be deducted towards personal expenses of the deceased instead of 1/3rd from the income of the deceased for the purpose of computation of compensation.

8. It is also provided that enhanced amount of compensation shall carry 6% simple interest from the date of institution of claim petition till the date of its payment.

9. Thus, for the reasons given above, the appeal is partly **allowed** and the award of the Tribunal is modified to the extent indicated above. The Insurance Company is directed to pay the enhanced amount of compensation to the claimants/appellants within a period of three months from the date of production of a certified copy of this order. There shall be no order as to costs.

Order Date :- 27.10.2023

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