

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 405 of 1999

Appellant :- Smt. Sukh Devi And Others

Respondent :- Smt. Rafiq And Others

Counsel for Appellant :- Madhav Jain

Hon'ble Saral Srivastava,J.

1. List has been revised. Nobody has appeared on behalf of the respondents.

2. Heard learned counsel for the appellants.

3. The present appeal has been filed against the award dated 21.01.1999 passed by Motor Accident Claims Tribunal, Agra in MAC No.1103 of 1997, whereby the the tribunal has awarded compensation of Rs.1,25,000/- alongwith 12% interest for the injuries suffered by the claimant-appellant in an accident on 18.11.1997 with truck No.RJ19G/0452.

4. Learned counsel for the appellants submits that the Tribunal should have assessed the income of the claimant-injured to be Rs.15,000/- per annum whereas she was engaged as Maid and used to earn Rs.2300/- per month i.e. Rs.27,600/- per annum. It is submitted that even if there was no proof of income of the claimant on record, the Tribunal ought to have taken at least Rs.1250/- per month i.e. Rs.15,000/- per annum as income of the claimant-injured for computing the compensation. He further submits that no amount towards future prospect has been awarded by the Tribunal whereas considering the age of the claimant/injured, he is entitled to 40% towards future prospect in view of the judgement of Apex Court in the case of **Pappu Deo**

Yadav Vs. Naresh Kumar & Others AIR 2020 SC 4424.

5. It is submitted that considering the age of the claimant/injured the Tribunal should have applied the multiplier of 16 in view of the judgement of the Apex Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and others 2009 (6) SCC 121** in computing the compensation.

6. It is further submitted that it is case of amputation of right hand below the elbow and claimant was working as house maid and because of the amputation of right hand, she cannot do any such work, and therefore, the loss of earning capacity suffered by the claimant is 100%. In support of the said contention, he has placed reliance upon the judgement of Apex Court in the case of **Kajal Vs. Jagdish Chand and Others (2020) 4 SCC 413**.

7. Per contra, learned counsel for the respondents has contended that compensation awarded by the Tribunal is just and proper and appeal of the claimants/appellants is deserves to be dismissed.

8. I have considered the rival submissions of the parties and perused the record.

9. The submission of learned counsel for the claimants/appellants in respect of assessment of income of the claimant-injured has substance. Accordingly, it is provided that Tribunal should have taken the income of the claimant-injured to be Rs.15,000/- per annum for the purpose of computation of compensation.

10. Considering the fact that right hand of the claimant has been amputated, this Court awards Rs.25,000/- to the claimant towards pain and suffering.

11. The submission of learned counsel for the claimants/appellants in respect of wrong application of multiplier has also substance in view of the judgement of Apex Court in the case of **Sarla Verma (supra)**. Thus, it is provided that compensation should be computed by applying the multiplier of 16.

12. Further, it has come on record that claimant/appellant was engaged as maid. It is also not in dispute that right hand below the elbow of the claimant/appellant has been amputated. In such view of the fact and considering the nature of work which the claimant/appellant was performing, her loss earning capacity is assessed to be 100% in view of the judgement of Apex Court in the case of **Kajal (supra)**. Accordingly, compensation shall be calculated treating the loss earning capacity of the claimant/appellant to be 100%.

13. Though the age of the claimant-appellant has not come on record but the report reveals that the age of the husband of the claimant-appellant was 36 years, therefore, it is obvious that the the claimant-appellant must be either of the same age or below the age of the husband. In such view of the fact, the claimant-appellant is also entitled to 40% future prospect.

14. 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.

15. 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 claimant or his legal representatives 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 cost.

Order Date :- 26.10.2023
SS