THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1742 of 2002(O&M)

Kamlesh and others

......Appellants

Versus

Satpal and others

...Respondents

FAO No. 1743 of 2002(O&M)

Kamlesh and others

......Appellants

Versus

Satpal and others

...Respondents

Date of decision : 27.01.2015

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

Present: Mr. Suresh Monga, Advocate
for the appellants

Mr. Vinod Chaudhri, Advocate
for respondent No. 3 - Insurance Company

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ANITA CHAUDHRY, J.

These two appeals have arisen from the award dated 04.12.2001 passed by Motor Accident Claims Tribunal, Sirsa. The appellants are seeking enhancement in the compensation awarded to them.

The facts needs a brief reference. Gobind Ram and Yudhisthar started from Sirsa and were proceeding to Delhi on 09.01.1999 in a jeep driven by Prem. At 8.30 a.m. when they were near Mundhal Chowk, a truck driven by Satpal-respondent No. 1 came from the opposite side and struck against the jeep. All the occupants sustained injuries. Gobind Ram died in the hospital while the other injured were taken to Medical College and Hospital, Rohtak. The jeep was also damaged. Two claim petitions were filed one seeking compensation for the death of Gobind Ram and the other seeking damages to the jeep.

The Tribunal noticed that Gobind Ram also owned five acres of land and he was an income tax payee. The income tax return where income was shown as ₹ 27,000/- was considered. A sum of ₹ 12,000/- per annum was added as income from agricultural land. The annual income was taken at ₹ 39,000/-. One third was deducted as personal expenses and applying the multiplier of 16, the loss was calculated at ₹ 4,16,000/-. A sum of ₹ 9,000/- was added for funeral expenses and loss of consortium.

With respect to the damage to the jeep, bills of ₹ 59,579/- were produced. The Tribunal made a cut of 50% as depreciation as the jeep was a very old 1987 model. It allowed a sum of ₹ 32,000/- for the damage to the jeep.

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The submission made on behalf of the appellants was that though the Tribunal picked up the income from the income tax return but the amount added as income from agricultural property was only ₹ 12,000/- per annum, which should be increased as the income generated from agricultural land was much higher, it was urged that only a sum of ₹ 9000/- was granted for loss of consortium and funeral expenses. It was also urged that since the deceased was 37 years old and addition of 50% to the actual income should have been added for computing the future loss. It was urged that some amount should be awarded for loss of love and affection for children and the amount on the head of loss of consortium should be increased as per ***Vimal Kanwar and others vs. Kishore Dan and others (Civil Appeal No. 5513 of 2012) decided on 03.05.2013*** and ***Rajesh and others vs. Rajbir Singh and others, (2013) 9 SCC 54.***

The submission on the other hand was that the accident had taken place in 1999 and agricultural land always remains with the family and the family has to engage some one to look after the land and no change in the income should be made. It was urged that the deceased was 37 years old and the Tribunal had applied the multiplier of 16 which should be 15 and the claimants had already been compensated since an additional multiplier was applied. It was also submitted that the jeep was of 1987 model and cut was made as the rubber parts are not re-compensated and no modification is required.

The Tribunal had taken the income that was depicted in the income tax return. Had there been any agricultural income that would have been shown in the returns filed by the deceased. Even if there was income from agriculture, the income from the land is not lost on account of death and if the deceased was an agriculturist no increase in the future prospects could have been made for the reason that he was not on fixed wages and also that the land remains with the family and only a Manager will have to be appointed to look after the land.

The Tribunal had taken the annual income to be ₹ 39,000/- and 1/3rd was deducted and multiplier of 16 was applied. If the income is taken to be ₹ 39,000/- and 1/3rd deduction is made, the amount available for the family would be ₹ 26,000/- and the compensation would come to ₹ 3,90,000/- using the multiplier of 15. To this a sum of ₹ 25,000/- should be added for loss of love and affection and ₹ 16,000/- on account of loss of consortium, as ₹ 9,000/- had already been allowed by the Tribunal. The total compensation i.e. payable would be ₹ 4,31,000/-. The Tribunal had granted compensation of ₹ 4,16,000/- which would be deducted and the remaining amount would be paid within two months failing which the appellants would be entitled to interest @ 6% p.a. from the date of filing of the appeal till realization.

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The contention made on behalf of the appellants was that the Tribunal had noted that the claimant had spent ₹ 59,579/- for the repair and had purchased spare parts but the entire amount was not allowed and depreciation of 50% was made on account of old model which should not have been made and the appellants were entitled to the whole amount.

The submission on behalf of the Insurance Company was that some of the bills related to repair of the vehicle and the other were for purchase of spare parts and repair bill was only for ₹ 3750/- and the major amount was for purchase of spare parts and the vehicle was of 1987 model and the cut was rightly made on account of depreciation. It was urged that the Tribunal had accepted the entire bill of repair and had granted 50% cut on the amount which was spent for purchase of spare parts and allowed ₹ 32,000/-.

I find no reason to differ with the view taken by the Tribunal. The repair bill of the jeep was only ₹ 3750/- and rest of the amount had been spent on purchase of spare parts. The amount spent on rubber parts is not entirely reimbursable. A deduction of 50% was made for depreciation. The cut was rightly made. There is no reason to take a different view, therefore, the appeal is dismissed.

Resultantly, FAO No. 1742 of 2002 is partly allowed and FAO No. 1743 of 2002 is dismissed.

27.01.2015 **(ANITA CHAUDHRY)**
reena **JUDGE**