IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1087 of 1999 (O&M)
Date of decision : September 09, 2015

Naresh Kumar and others .....Appellants

Versus

Jagjit Singh and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Arvind Mittal, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate for
Mr. Neeraj Khanna, Advocate
for respondent No. 3.

LISA GILL, J.

Appellants-claimants have preferred this appeal praying for enhancement of compensation awarded on account of death of Ashok Kumar in a motor vehicular accident by the learned Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as 'Tribunal') vide award dated 07.02.1998.

Facts as revealed in the claim petition are that Ashok Kumar (deceased) alongwith his father – his sister Sudesh Kumari, Asha Rani and their respective husbands Pawan Kumar son of Babu Ram and Pawan Kumar son of Nand Lal started for Rishikesh from Ludhiana in Maruti Van No. PB-13-5510 for attending the last rites of one Sham Lal on 21.12.1995. Sudesh Kumari, Asha Rani and their respective husbands had come from Jagraon in this Maruti van. Hari Chand and Ashok Kumar had joined them at Ludhiana. Jagjit Singh – respondent No. 1 was driving this vehicle. Respondent No. 1 - Jagjit Singh was driving this maruti van at a very high speed in a rash and negligent manner and when they reached in the area of village Sangal Gram, Lodhinala/Kalenala, P.S. Bhagwan Puri on Saharanpur-Dehradun road, he lost control of their vehicle and hit against Sheesam tree on the road side. On account of this accident, Hari Chand, Ashok Kumar, Pawan Kumar son of Babu Ram died at the spot. Sudesh Kumari, Asha Rani and Pawan Kumar son of Nand Lal received multiple injuries and were taken to Civil Hospital, Saharanpur and further referred to DMC Hospital, Ludhiana. DDR Ex. A3 was recorded at Police Station Ranipur, District Haridwar. Post Mortem Report of the deceased Ashok Kumar is Ex. A4.

Claimants being the brother and sisters of the deceased preferred a claim petition under Section 166 of Motor Vehicles Act, 1988, claiming compensation to the tune of ₹20 lakhs on account of death of Ashok Kumar who was stated to be 42 years old, doing his own business and a Proprietor of M/s Naresh Supply Centre, Town Hall, Mohalla Charangian, Ludhiana. Business was run jointly by him and his brother/claimant Naresh Kumar. They were dealing in whole sale footwear business.

Claim was resisted by the respondents.

Learned Tribunal framed the following issues:-

1. Whether the accident resulting in the death of Ashok Kumar took place due to the rash and negligent driving

the maruti van by respondent No. 1? OPA.

2. Whether the claimants were dependent upon the deceased and to what amount of compensation they are entitled to and from whom? OPA.
3. Whether the respondent No. 1 was not holding a valid driving licence at the time of the accident, if to its affect? OPR.
4. Relief.

Learned Tribunal concluded that the accident in question occurred due to rash and negligent driving of the offending van by respondent No. 1. Ashok Kumar lost his life on account of injuries sustained in this accident.

Total compensation of ₹2,78,500/- was awarded by the Tribunal. Age of the deceased was taken to be 50 years at the time of accident on the basis of Post Mortem Report. His income was assessed as ₹3,120/- per month on the basis of his income tax return Ex. A1. Dependancy was assessed as ₹2,000/- per month and ₹24,000/- per annum. Multiplier of 11 was applied and loss of dependancy worked out as ₹2,64,000/-. Total compensation awarded was as under:-

Loss of dependancy (24000x11)	₹2,64,000/-
Loss of love and affection	₹ 10,000/-
Funeral expenses	₹ 2,000/-
Transportation charges	₹ 2,500/-
Total	**₹2,78,500/-**

Learned counsel for the appellants submits that claimants are entitled to enhancement in the quantum of compensation awarded to the claimants on various counts. Age of the deceased has been wrongly taken as 50 at the time of accident. Loss of future prospects have not been taken into account while awarding the compensation.

Learned counsel for respondent No. 3, however, submits that adequate compensation has already been awarded by the Tribunal which calls for no further enhancement.

I have heard learned counsel for the parties and gone through the available record.

Perusal of Ex. A1 i.e. income tax return of the deceased Ashok Kumar for the assessment year 1995-96 reflects his date of birth to be 03.04.1953. This is further corroborated by mark sheet of the deceased in respect to Higher Secondary (Part-I) Examination held in 1968 'Mark X'. Both the documents reflects his birth to be 03.04.1953. Therefore, the Tribunal has indeed erred in relying upon the age mentioned in Post Mortem Report in the wake of specific evidence on record to indicate the age of the deceased. Deceased was clearly 42 years old at the time of accident, which took place on 21.12.1995. There is no dispute regarding income of the deceased, which as per income tax return is ₹3120/-.

Keeping in view the judgements of the Hon'ble Supreme Court in ***Rajesh and others versus Rajbir Singh and others*** 2013 (3) RCR (Civil) 170 and ***Munna Lal Jain and others versus Vipin Kumar Sharma and others*** 2015 (6) SCC 347 addition of 30% is to be afforded on account of loss of future prospects of the deceased. With the said addition his income is assessed as ₹4,056/-

(₹3120+₹936/-). It is an admitted position that the deceased was a divorcee. The claimants are the brother and sisters of the deceased, thus, deduction of 50% has to be applied treating the deceased to be Bachelor. His income per month is assessed as ₹2,028 per month and ₹24,336/- per annum. Multiplier of 14 is to be applied as per the judgment of Hon'ble Supreme Court in ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77. Loss of dependancy, therefore, is assessed as ₹3,40,704/-. The claimants are entitled to funeral expenses of ₹15,000/- (including transportation charges) keeping in view the fact that the accident took place in the year 1995. Award of ₹10,000/- on account of loss of affection is maintained. Therefore, the claimants/appellants are entitled to total compenation of ₹3,65,704/-.

The amount of compensation already awarded to the appellants shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 07.02.1998 passed by the learned Motor Accident Claims Tribunal, Ludhiana, present appeal is disposed of.

(Lisa Gill)
Judge

September 09, 2015
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