IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

*****

FAO No. 2723 of 2000
Date of decision : 21.10.2015

Pushpa Rani and another ....**Appellants**

v.

Balbir Singh and others ......**Respondents**

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Mr. Harsh Garg, Advocate, for the appellants

Mr. Atul Gaur, Advocate, for
Mr. Sumeet Goel, Advocate, for respondent No.5

<u>Ramendra Jain, J.</u>

The appellants-claimant being widow and major son of deceased Hans Raj, aged 54 years, have preferred the present appeal for enhancement of compensation against his death, in a motor accident by modifying the impugned award dated 10.11.1999, passed by the learned Motor Accidents Claims Tribunal, Kaithal (in short 'the learned Tribunal').

Brief facts, of the case are that on 24.4.1997, Hans Raj on his bicycle while going to Village Cheeka, when reached near the main gate of Ware House, Cheeka, a truck bearing No. HNQ 747, driven by respondent No.1, by coming from the backside in a rash and negligent manner, hit against his bicycle and dragged him. The aforesaid offending truck after causing the accident ran away from the spot. Hans Raj was shifted to Government Hospital, Guhla and then to Rajindra Hospital, Patiala from where, he was further referred to PGI, Chandigarh, where he died on 21.5.1997. He was working as a Meter Reader in Haryana State Electricity Board (in short 'the Board'), drawing monthly salary of

₹ 5710/- The appellants-claimant with these broad submissions filed claim petition under Section 166 of the Motor Vehicles Act (in short 'the Act') against the respondents for compensation.

Upon notice, respondents contested the claim petition by filing their respective written statements. Respondents No.1 and 2 took the stand that respondent No.1 was not driving the aforesaid truck at the time of accident, rather the same was driven by one Kashmir Singh son of Rajbir Singh resident of Kanpur. They further denying the factum of accident for want of knowledge, pleaded that elder brother of respondent No. 2 had obtained a power of attorney from her sister whereby, he had become owner of the aforesaid truck to the extent of 3/4th share. Respondent No.4 - Insurance company also denying the accident, pleaded that it was not liable to pay any compensation on account of violation of terms & conditions of the insurance policy by respondents No.1 and 2.

Learned trial Court after framing issues and recording necessary evidence of both the sides to their satisfaction, accepted the claim petition with costs and granted a sum of ₹ 2,84,000/- towards compensation on account of death of Hans Raj along with interest @ 12% per annum from the date of filing of the petition till realisation.

Learned counsel for the appellants-claimant argued that compensation awarded by the learned trial Court is quite inadequate. The learned Tribunal has erred in deducting the amount of pension from the monthly income of the deceased, while calculating compensation. The monthly salary of the deceased to the tune of ₹ 6413/- was proved by the claimants on record, but the learned Tribunal reduced the same to ₹ 2000/- per month in an illegal and arbitrary manner.

On the other hand learned counsel for the Insurance company refuted the above submissions.

I have given my thoughtful consideration to the submissions made by both the sides.

It was evident from the record that Hans Raj was drawing monthly salary to the tune of ₹ 6413/- at the time of his death at the age of 54 years. His retirement age was 58 years. Though the learned trial Court has categorically observed that Hans Raj would have earned some annual increments and DA before retirement, but did not add something towards his aforesaid monthly income for calculating future prospects, rather, reduced the same to ₹ 2000/- per month by taking into account the monthly pension of appellant No.1- claimant of ₹ 2400/-. In **"Lal Dei and others v. Himachal Road Transport, 2007 (8) SCC 319"**, the Hon'ble Apex Court has held that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of service conditions receivable by the heirs after his death. The heirs received the family pension even otherwise than the accidental death. Hence, there is no co-relation between the two and therefore, the pension amount paid to the family, cannot be deducted while calculating the compensation awarded to the claimants.

Hence, in view of the above preposition of law, it can safely be said that the learned Tribunal has wrongly deducted the family pension of ₹ 2400/- received by appellant No.1-claimant, against the death of her husband Hans Raj, while assessing their dependency.

Considering the fact that the deceased had only one dependent i.e. appellant No.1, because appellant No.2 is his major son, 1/3rd deduction has to be made to the aforesaid monthly income and after applying the same, dependency of the appellants-claimant comes to ₹ 4276/- per month. In "**Sarla Verma and others v. Delhi Transport Corporation and another,** **2009(3) RCR (Civil)"** it has been held by the Hon'ble Apex Court that an addition of 30% should be made in case the deceased is aged 40 to 50 years for calculating the future prospects.

After adding 30% to ₹ 4276/-, monthly dependency of the appellants-claimant comes to ₹ 5558/- say ₹ 5500/- per month or ₹ 66,000/-per year. In the instant case, the learned Tribunal has applied multiplier of "11" taking into account the Second Schedule given under Section 163 of the Act. Hence, after applying the multiplier of "11" to the aforesaid, annual dependency of the appellants-claimant comes to ₹ 7,26,000/-.

The learned Tribunal has awarded ₹ 2000/- towards funeral expenses, besides ₹ 5000/- towards loss of consortium and ₹ 2500/- towards loss of estate, totalling ₹ 9500/- rounded of ₹ 10,000/- to the appellants-claimant. Compensation awarded in the aforesaid heads by the learned Tribunal is also on the lower side keeping in view **Sarla Verma's case** (supra).

Hence, keeping in view the latest trend of the Hon'ble Apex Court, funeral expenses of ₹ 2000/- granted by the learned Tribunal to the appellants-claimant is enhanced to ₹ 10,000/-, ₹ 5,500/- granted towards loss of consortium and loss of estate enhanced to ₹ 50,000/-. A further sum of ₹ 50,000/- is granted towards love and affection. Accordingly, the impugned award of the learned Tribunal is modified to the effect that the appellants-claimant are entitled to compensation of ₹ 7,26,000 + 10,000/- + 50,000/- + 50,000/- = ₹ 8,36,000/-. The learned Tribunal has already awarded a sum of ₹ 2,84,000/- to the appellants-claimant. Thus, the appellants-claimant are held entitled to a sum of ₹ 8,36,000/- - 2,84,000/- = ₹ 5,52,000/- more as compensation against the death of Hans Raj along with interest at the same rate as awarded by the learned Tribunal i.e. @ 12% per annum from the date of institution of the claim petition till realisation.

Since in the instant case, appellant No. 2 is major son of the deceased Hans Raj, therefore, the compensation awarded by this Court shall be apportioned in between appellants No.1 and 2 in the ratio of 80 : 20 i.e. in the same terms as adopted by the learned Tribunal.

(RAMENDRA JAIN)
JUDGE

21.10.2015
Ashwani