IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1816 of 1998 (O&M)
Date of Decision:08.01.2015

Nirmal Singh

….Appellant

Versus

Sumer Chand and another

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Karminder Singh, Advocate for the appellant.

Mr. R.C. Kapoor, Advocate for the respondents.

NAVITA SINGH, J.

1. The Motor Accident Claims Tribunal (Tribunal for short), Yamunanagar at Jagadhri granted compensation to the tune of Rs.2,76,500/- to the claimants i.e. the present respondents for the death of their son in a motor vehicle accident, which took place on 9.5.1996. The offending vehicle was not insured and the appellant herein was the owner and driver of the same. The liability was thus fastened on him and he filed the appeal.

2. Learned counsel for the appellant argued that there was no proof at all of the income of the deceased who was 20 years old at the relevant time and the Tribunal without any evidence assessed the income of Rs.2000/- per month. The accident took place in 1996 and, therefore, the minimum wages prevailing for a labourer at that time should have been taken as the income, at best.

3. Learned counsel for the respondents argued that the appellant himself appeared as RW1 before the Tribunal and it came in the award that he had admitted that the deceased was running a shop at village Nathanpur. Since the appellant himself admitted that the deceased was a shop keeper, income of

Rs.2000/- per month taken by the Tribunal was not on the higher side. It was further contended on behalf of the respondents that rather something should be added towards future prospects even though no cross objections were filed by the claimants. It was lastly submitted on behalf of the appellant that nothing was given under the conventional heads.

4. So far as the income is concerned, it is felt that the same was assessed rightly by the Tribunal as the appellant had admitted that the deceased was running a shop. So far as the proof of income is concerned, people running small shops in villages cannot be expected to keep detailed accounts.

5. The next argument on behalf of the appellant was that multiplier was applied according to the age of the deceased whereas it should have been applied according to the age of the claimants as the deceased was un-married. In support of the argument, counsel for the appellant relied on the case reported as Mohan Lal and another Vs. Rameshwar and others 1999 ACJ 829, which was a judgment delivered by a Division Bench of this Court. To counter the arguments, learned counsel for the respondents relied on Amrit Bhanu Shali and others Vs. National Insurance Co. Ltd. and others 2012 ACJ 2002 in which the Supreme Court had held that the age of the deceased should be considered for the purpose of multiplier.

6. The judgment produced by counsel for the respondents will not help him because a larger bench of the Supreme Court delivered a judgment reported as New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and others 2007 (3) RCR (Civil) 593 where it was held that the multiplier was to be applied not according to the age of the deceased but according to the age of the claimants in such circumstances. It is thus clear that the multiplier was wrongly applied by the Tribunal. It came in the award that age of the mother of the deceased was 50

years and she being the class-I heir, her age is being taken as the basis. Multiplier applied should have been 13. According to that, the compensation on the basis of income would be Rs.2,08,000/-. An amount of Rs.2500/- was granted towards loss of estate and Rs.2000/- towards funeral expenses. After including the said amount, the compensation would now be Rs.2,12,500/-.

7. In view of the provision laid down in Order 41 Rule 33 of the Code of Civil Procedure, it is felt that something should have been granted to the respondents for loss of love and affection and the amount for loss of estate should also have been little higher, though the respondents having lost a young son, no money can otherwise compensate the same. It is, therefore, held that an amount of Rs.55,000/- should be given to the respondents for loss of love and affection and an additional amount of Rs.9000/- for loss of estate. The total compensation shall, therefore, remain the same as was awarded by the Tribunal.

8. The appeal is disposed of in the above said terms.

(NAVITA SINGH)
JUDGE

08.01.2015
ishwar

Whether to be referred to reporter: Yes