IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2931 of 1999 (O&M)
Date of Decision: February 11, 2015

Kela Devi and others

..Appellant(s)

Versus

Ram Dutt and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes

Present: Mr. S.R. Hooda, Advocate
for the appellant(s).

Mr. Alok Jain, Advocate
for respondents no.1 & 2.

Mr. Suvir Dewan, Advocate
for respondent no.3-insurance company.

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ANITA CHAUDHRY, J.

1. This appeal is for enhancement of the compensation for the death of Rajinder who met with an accident on 03.08.1998. Rajinder was a driver in Water Services Division, Rohtak and was getting a salary of Rs.6,461/- per month. The claimants had pleaded that he also had agricultural income of Rs.4,000/- per month. The Motor Accident Claims Tribunal, Sonipat (here-in-after

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referred to as the Tribunal) took the carry home salary i.e. Rs.4,659/- per month and observed that the deceased was only drawing Rs.3,000/- per month and out of which 1/3rd amount he was spending on himself and took the dependency at Rs.2,000/- per month and calculated the annual contribution at Rs.24,000/-. Applying the multiplier of 14, it calculated the compensation at Rs.3,36,000/-.

2. The submission on behalf of learned counsel for the appellants is that the gross salary should have been taken into consideration and since he was a government employee, an addition of 30% should have been made as per the decision of Hon'ble Supreme Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(6) SCC 121.*** It was urged that the Tribunal had failed to award any amount for loss of love and affection, loss of consortium, funeral expenses and litigation expenses. It was urged that no amount had been awarded for the scooter. Reliance was placed upon ***Santosh Devi Vs. National Insurance Co. Ltd. and others 2012(2) RAJ 506,Eastern Coalfilds Ltd. Vs. M/s. Tetulia Coke Plant (P.) Ltd. and others 2012(2) RAJ 5 and Vimal Kanwar*** *and* ***others Vs. Kishore Dan and others 2013(2) RCR (Civil) 945***.

3. Responding to the argument, learned counsel for the insurance company had urged that there was no issue or evidence regarding damage to the scooter and therefore, the submission cannot be considered. It was urged that if any

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modification has to be made in the award then income-tax has to be deducted.

4. In the year 1998-99, the tax exemption was for Rs.50,000/- and if the income was between Rs.50,000/- and Rs.60,000/-, tax of 10% was payable. For the next slab from Rs.60,000/- to Rs.1,50,000/- tax was payable at 20%.

5. As per *Sarla Verma's* case (supra) an addition of 30% has to be made towards future prospects in the case of death of a person who had a permanent job. It had also been observed that where the annual income is in the taxable range, the actual salary would be read as actual salary less tax. It is also settled that it is the gross salary which has to be taken into account while making the calculations and not the take home salary.

6. The record of this case had been burnt. The counsel for the appellant had provided photocopy of last pay certificate which tallies with the total income as mentioned in the award. Making an addition of 30% to the income, the total income would come to Rs.8,399/- per month. Considering the family members, a deduction of 1/4th is being made and the income available for the family would be Rs.6,300/- per month. The annual contribution would come to Rs.75,600/-. Applying the multiplier of 14, the income would come to Rs.10,58,400/-. Deducting 20% tax i.e. Rs.2,11,680/-, remaining amount would be Rs.8,46,720/-. Considering the fact that the accident had taken place in 1998, a sum of

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Rs.10,000/- is added for loss of consortium, Rs.10,000/- is added for loss of love and affection, Rs.5,000/- is added for funeral expenses and Rs.3,000/- as litigation expenses. The total of this comes to Rs.8,74,720/-. The Tribunal had awarded Rs.3,36,000/- which shall be deducted and the remaining amount shall be shared by the appellants in the same ratio as allowed by the Tribunal. The amount shall be paid within two months, failing which the appellants would be entitled to interest @ 6% from the date of filing the appeal till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

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