IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 27.7.2015

FAO No. 4307 of 2004 (O/M)
Sumitra Devi ..... Appellant

Versus

Ram Phal and others ...... Respondents

FAO No. 4308 of 2004 (O/M)
Smt. Sumitra Devi ..... Appellant

Versus

Ram Phal and others ...... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arun Singal, Advocate, for the appellant in both the appeals.

Mr. R.C. Kapoor, Advocate, for insurance company in both the appeals.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

By this common judgment, I will dispose of FAO No. 4307 of 2004 titled as *Sumitra Devi Versus Ram Phal and others* and FAO No. 4308 of 2004, titled as *Smt. Sumitra Devi Versus Ram Phal and others,* filed by the claimant/appellant against the award dated 3.8.2004, passed by the Motor Accident Claims Tribunal, Panipat (in short 'the Tribunal'), who happens to be the mother of deceased Vinod Kumar and widow of deceased Ram Karan @ Ram Karan Dass, seeking enhancement of compensation.

Common facts of the case are that on 10.9.2001, Vinod Kumar alongwith his father Ram Karan @ Ram Karan Dass was travelling in a car, bearing registration No. HR-06-D-9282. They were going from Panipat to Hansi. When they reached near village Mara, one TATA 407, bearing registration No. HR-03-8883, driven in rash and negligent manner by respondent No. 1-Ram Phal came from Hansi side and hit the car. Ram Karan @ Ram Karan Dass died at the spot, whereas Vinod Kumar sustained multiple grievous injuries and was removed to General Hospital, Hansi. However, he also succumbed to the injuries.

Claim Petition No. 4 of 2002 was filed by Smt. Garima @ Renu widow of Vinod Kumar, her two minor children, namely, Subhi (daughter) and Hardik (son) and Sumitra Devi, mother of the deceased. The second Claim Petition No. 5 of 2002 was filed by Sumitra Devi widow of Ram Karan @ Ram Karan Dass.

It was stated that Vinod Kumar was 28 years of age. His monthly income was Rs. 1,15,000/-. In the second claim petition, it was claimed that Ram Karan @ Ram Karan Dass was 53 years of age and his monthly income was Rs. 35,000/-. Respondent No. 1 (driver) did not appear before the Tribunal and he was proceeded against ex-parte, whereas the owner (respondent No. 2) admitted the accident, but pleaded that it was because of the negligent driving of Vinod Kumar, driver of Maruti car. The insurance company took the plea that it was head on collision between the car and TATA 407 and it is a case of contributory negligence.

From the pleadings, following issues were framed :-

“1. Whether the accident in question took place due to rash and negligent driving of respondent No. 1 driver of TATA No. 407 bearing registration No. HR-03/8883 and whether Vinod Kumar and Ram Karan died on account of injuries received by them in the said accident, as alleged ? OPP

2. If issue No. 1 is proved, whether the claimants are entitled to receive any compensation, if so, how much and from whom ? OPP

3. Whether the respondent No.1 is not holding a valid driving licence, if so, its effect ? OPR

4. Whether the petitions are not maintainable in the present form in view of P.Os. Taken in the written statements ? OPR

5. Relief.”

The Tribunal held that the accident took place due to rash and negligent driving of TATA 407. It was observed that Garima @ Renu widow of Vinod Kumar had re-married. It was found from the income tax returns that the date of birth of Vinod Kumar was 14.3.1970, showing that he was 31 years of age at the time of his death. It was noticed that the gross salary of Vinod Kumar from M/s Shree Singhal Spinners Pvt. Ltd. was shown to be Rs. 60,000/- in the assessment year 2001-02 (Ex.P10). His commission income was shown to be Rs. 30,000/-. In the assessment year 2000-01, his salary was shown to be Rs. 60,000/- and commission income was shown to be Rs. 27,000/-. The copies of orders (Ex.P12 and Ex.15), passed by the ITO, Panipat, were also produced, showing that the income tax was paid. Therefore, after deducting standard deduction of Rs. 20,000/-, the income of Vinod Kumar was taken to be Rs. 67,000/-. After deducting the personal expenses, the dependency of the claimants was taken to be Rs. 45,000/- per annum. The multiplier of 17 was applied and the compensation was worked out to be Rs. 7,65,000/-. Rs. 10,000/- towards funeral and last rites were also allowed and the compensation of Rs. 7,75,000/- was allowed.

In the claim petition filed by Garima @ Renu, widow of Vinod Kumar, while noticing that she had re-married, Rs. 1,10,000/- were ordered to be paid to her. Rs. 1,65,000/- were ordered to be paid to Sumitra Devi, mother of the deceased and Rs. 2,50,000/- each were ordered to be paid to the minor children of the deceased Vinod Kumar, namely, Subhi and Hardik.

Regarding the death of Ram Karan @ Ram Karan Dass, it was held that he was 55 years of age. As per his date of birth, shown in the income tax returns (Ex.P4 and P5), his date of birth was recorded in the income tax returns was 30.5.1946. It was observed that as per the balance sheets (Ex.P4 and Ex.P5), the deceased was getting gross salary of Rs. 60,000/- per annum from M/s Shree Singhal Spinners Pvt. Ltd. He was also getting rental income. After deducting Rs. 20,000/- towards standard deduction, the salary of Ram Karan @ Ram Karan Dass was taken to be Rs. 40,000/- per annum. The dependency of his widow was taken to be Rs. 20,000/- per annum. The multiplier of 8 was applied and compensation was worked out to be Rs. 1,60,000/-. Rs. 10,000/- towards funeral expenses was allowed. In this way, compensation of Rs. 1,70,000/- was awarded.

I have heard learned counsel for the appellant, learned counsel for the insurance company and have also carefully gone through the file.

Learned counsel for the appellant has vehemently argued that the Tribunal has not properly assessed the income, as given in the income tax returns. The standard deduction of Rs. 20,000/- is for calculating the income tax and cannot be deducted from income. Moreover, income from the agriculture and other sources was not considered.

Firstly, I will take up the case regarding compensation on account of death of Vinod Kumar.

It comes out that appeals have been filed by Sumitra Devi only and the other claimants have not filed any appeal. The income tax return (Ex.P10), filed by Vinod Kumar in the year 2001-02 shows that he had shown the income from salary as Rs. 40,000/-. The income from other sources was shown to be Rs. 30,000/-. It is claimed that the deceased was getting land on lease. In this way, the total income shown was Rs. 70,000/- per annum. 30% is to be deducted as income tax and his remaining income comes to Rs. 49,000/- per annum. Since it is claimed that the deceased was getting land on lease, therefore, there was loss of management only. Therefore, for loss of management of the agriculture income, the loss is calculated at Rs. 2,000/- per month i.e. Rs. 24,000/-. The total income of the deceased thus comes to Rs. 73,000/-, out of which 1/3rd is to be deducted on account of personal expenses of deceased i.e. Rs. 24,333/-, which are rounded off to Rs. 24,000/-. The dependency of the claimants comes to Rs. 49,000/-. Since the deceased was 31 years of age, the multiplier of 16 is to be applied. Thus, the amount of compensation would have come to Rs. 49,000 x 16 = Rs. 7,84,000/-. The mother would also be entitled to Rs. 1,00,000/- on account of loss of love and affection of his son. Since the widow and two minor children of deceased Vinod Kumar have not come in appeal, therefore, the enhanced compensation to be awarded to the mother is to be considered. Out of the amount of compensation, Rs. 1,00,000/- for loss of love and affection shall exclusively go to mother of the deceased Sumitra Devi and out of Rs. 7,84,000/-, another Rs. 1,00,000/- shall also be given to the mother of the deceased. In this way, it is held that the present appellant (mother of the deceased) would have been entitled to Rs. 2,00,000/-. Since she has already been ordered to pay Rs. 1,65,000/- out of the compensation awarded by the Tribunal, therefore, the additional sum of Rs. 35,000/- is allowed, which is to be paid with interest @ 7.5% per annum from the date of filing the claim petition till its realization.

Now coming to the compensation awarded on account of death of Ram Karan @ Ram Karan Dass, it comes out that as per the income tax return for the year 2000-01 (Ex.P6), the deceased had shown Rs. 40,000/- as income from salary and Rs. 22,920/- as income from house property and the total shown is Rs. 62,920/-, from which 30% income tax is to be deducted and the balance would come to Rs. 44,044/-. The deceased had also shown the agriculture income amounting to Rs. 2,35,450/-. Since the deceased was not owning agriculture land, but stated to be getting land on lease, therefore, there is loss of management only, which is assessed at the rate of Rs. 2,000/- per month i.e. Rs. 24,000/- per annum, is allowed. Therefore, the effective income of deceased Ram Karan @ Ram Karan Dass would come to Rs. 68,044/-. 1/3rd i.e. Rs. 22,681/-, which are rounded off to Rs. 22,700/-, are taken to be personal expenses. The dependency of the claimant comes to Rs. 45,344/-. As the deceased was 53 years of age, the multiplier of 11 is to be applied as per the authority of the Hon'ble Supreme Court in case of *Smt. Sarla Verma and others Versus Delhi Transport Corporation and another,* 2009 (3) RCR (Civil) 77. So, the amount of compensation comes to Rs. 4,98,784/-. Rs. 1,00,000/- on account of loss of consortium to the widow Sumitra Devi are allowed. Another Rs. 25,000/- for funeral and last rites are also allowed. The total amount of compensation comes to Rs. 6,23,784/-. The enhanced compensation shall be paid to the claimant with interest @ 7.5% per annum from the date of filing the claim petition till its realization. Since the offending vehicle was insured with the insurance company, therefore, respondent-insurance company shall be liable to pay the compensation, which shall be paid to the claimant/appellant within three months from the date of order, passed by this Court.

Both the appeals are accordingly allowed to the extent as aforesaid.

(KULDIP SINGH)
JUDGE

27.7.2015
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