IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4681 of 2007 (O&M)
Date of Decision: February 27, 2015

Smt. Raj Bala and another

..Appellant(s)

Versus

Barjesh Puri and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. N.K. Bansal, Advocate
for the appellant.

Mr. Ravinder Arora, Advocate
for Mr. Vinod Gupta, Advocate
for respondent no.3.

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ANITA CHAUDHRY, J.

1. The appellants seek modification of the award dated 29.05.2007, passed by the Motor Accident Claims Tribunal, Chandigarh (here-in-after referred to as the Tribunal).

2. It would be useful to refer to the facts first. Mohinder Kumar died in an accident on 16.08.2005. He was stated to be an agriculturist and earning Rs.20,000/- per month. The Tribunal found that no evidence to prove the avocation of the deceased or his income. The Tribunal even doubted as to whether he was engaged in manual work considering that he was diabetic. His income was taken at

Rs.2,100/- per month. Calculations were made considering the contribution at Rs.1,400/- per month. Multiplier of 10 was applied and compensation was calculated at Rs.1,68,000/-. An addition of Rs.1,76,696/- was made for the amount spent on treatment and medicines and a sum of Rs.9,500/- was added for general damages.

3. The appellants had disputed the age and had stated that the deceased was 50 years old. The appeal had been adjourned to enable the appellants to place some record in this regard but they were unable to do so.

4. The submission made on behalf of the appellants is three fold. Firstly that the minimum wages were Rs.3,000/- per month in the year 2005 and the multiplier should have been 13 instead of 10 and addition should have been made for future prospects and compensation awarded on the heads of loss of estate, funeral expenses and loss of consortium was less.

5. Supporting the judgment, it was urged that invariably the claimants plead higher income and when no evidence is led, the minimum wages are taken into account and since the claimants were unable to establish his income or that the deceased was 50 years and multiplier for the age group of 51 to 55 can be taken. It was urged that since the deceased was over 50 years of age there can be no addition for future prospects. It was urged that the award was passed over a decade ago.

6. The Hon'ble Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77*** considered the decisions rendered in ***Susamma Thomas, Sarla Dixit (Smt.) & Anr. Vs. Balwant Yadav & Ors., 1996(2) RRR 90: (1996) 3 SCC 179, Abati Bezbaruah Vs. Dy. Director General, Geological Survey of India & Anr., (2003) 3 SCC 148*** and in paragraph 24 of the report held thus:

"24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was 3 (2009) 6 SCC 121 4 (1996) 3 SCC 179 5 (2003) 3 SCC 148 6 increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

7. With no satisfactory evidence regarding income, the minimum wage was the only criteria which could be adopted. The minimum wages in 2005 were Rs.2,340/- per month. The deceased was over 50 years, therefore, the

multiplier applicable was 11 instead of 10. There can be no addition towards future prospects since the deceased was over 50 years. Making the calculations taking Rs.2,340/- as the monthly income and deducting 1/3rd towards personal expenses, the amount available for the family would be Rs.1,560/- per month. The compensation would be Rs.1560/- X 12 X 11 = Rs.2,05,920/- instead of Rs.1,68,000/-. The appellants are thus entitled to an increase of Rs.37,920/- besides Rs.45,000/- for loss of consortium, Rs.10,000/- more for funeral expenses and Rs.50,000/- for loss of love and affection. The total of this comes to Rs.1,47,920/-.

8. The appellants are entitled to a sum of Rs.1,47,920/- more which would be payable to the appellants in the same ratio as allowed by the Tribunal to be paid within two months, failing which the appellants would be entitled to interest @ 6% from the date of filing of appeal till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 27, 2015
sunil