IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4450 of 2008 (O&M)
Date of Decision:28.01.2015

Smt. Meena and others

….Appellants

Versus

Jaswant Singh and others

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. A.P. Bhandari, Advocate for the appellants.

None for the respondents.

NAVITA SINGH, J.

CM No.24003-CII of 2008

An application under Order 41 Rule 27 of the Code of Civil Procedure was filed by the appellants for placing on record the documents from which it was evident, as stated, that the deceased was paying Rs.1000/- as installment of loan to the bank and also there was one rent agreement. The documents Annexure A1 to A6 were, therefore, sought to be read in evidence.

The documents Annexure A1 to A5 do not make it clear that the amount mentioned was an installment towards any loan because there is no proof of sanction of loan in favour of the deceased and about its availing. Also in Annexure A5, the amount was Rs.800/- on 27.6.2002 whereas in the same month earlier on 3.6.2002, the amount shown was Rs.3000/-. In April 2002, it was Rs.1000/- and in January and March 2002 also, it was Rs.1000/-. Bank account number was given.

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The documents are thus not necessary for effective adjudication of the matter, especially because nothing at all can be proved from those that the deceased was availing any loan facility and was paying installments thereof. The documents are not with regard to fixed amount. Similarly the rent agreement for paying Rs.300/- as rent was not only in the name of the deceased but his father was also one of the tenants in the shop. It, therefore, cannot be said from it that the deceased was himself running a shop. It may also not be out of place to mention here that the claimants had alleged before the Tribunal that Vijay Kumar was running a flour mill and rice mill and was doing other work also. In such event, he should have been a rich man.

For the reasons given above, application is dismissed.

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1. Counsel for respondent No.3 was duly informed but no one has appeared. Counsel for the appellants has, therefore, been heard.

2. As award was passed on 3.6.2008 by the Motor Accident Claims Tribunal, Yamunanagar (Tribunal for short) granting compensation to the tune of Rs.3,94,000/- for the death of Vijay Kumar in a road accident which took place on 19.8.2006, the appellants came up for enhancement.

3. Counsel for the appellants argued that besides the presence of the deceased, there were four members of the family i.e. the widow and three children but deduction towards personal living expenses was made to the extent of $1/3^{rd}$ and contribution to the family was taken as $2/3^{rd}$ of the income. Deduction should have been made to the extent of $1/4^{th}$, even if it be said that the parents were not dependent on the deceased. The next contention was that the income was not assessed correctly. He was treated as a labourer getting

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Rs.3000/- per month whereas he was paying EMI of Rs.1000/- per month to Punjab National Bank. It was lastly contended that nothing was granted under any of the conventional heads.

4. So far as the income is concerned, the same was rightly assessed by the Tribunal in the absence of any proof. If the deceased had been running a flour mill and rice mill besides other work as alleged in the claim petition, he would have maintained accounts but no such documents were produced. If he was running a shop in the tenanted premises even then some accounts, even though rough accounts, must be maintained. Regarding the arguments that he was paying Rs.1000/- for installment of loan, there is no proof. The application for additional evidence has been dismissed above and the detailed order passed on CM shows that the documents were not connected with any kind of loan.

5. Taking the income of the deceased to be Rs.3000/- per month, it is held that in view of the number of family members, deduction to the extent of $1/4^{th}$ should have been made for personal expenses. The annual contribution to the family was, therefore, Rs.27,000/-. Multiplier of 16 had been rightly applied. The amount related to income comes to Rs.4,32,000/-.

6. Under the conventional heads, an amount of Rs.10000/- was awarded for expenses on funeral and last rites, which was adequate for the death of Vijay Kumar in 2006, especially in view of social and economic status of the family. The contention of the appellants regarding compensation for loss of consortium to the widow and for loss of love and affection to the minor children, is acceptable. An amount of Rs.1,00,000/- is awarded to the widow for loss of consortium and a sum of Rs.50,000/- to the children for loss of love and affection. The total compensation will now be Rs.5,92,000/-. Enhanced amount shall be paid to the appellants with interest at the rate of 6% per annum. Liability shall remain as fixed by the Tribunal.

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7. The appeal is allowed in the above terms.

(NAVITA SINGH)
JUDGE

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Whether to be referred to reporter: Yes

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