IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1390 of 2010 (O&M)
Date of decision: 06.08.2015

Master Rahul and others

....Appellants

Versus

Chand Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. P.R. Yadav, Advocate
for the appellants.

Mr. Atul Yadav, Advocate
for respondents No.1 and 2.

Mr. Vishal Aggarwal, Advocate
for respondent No.3.

K.C. PURI J. (Oral)

This is an appeal directed by the claimants against the award dated 02.09.2009, passed by Sh. Ramendra Jain, Motor Accident Claims Tribunal, Gurgaon, vide which the claim petition was partly accepted.

Briefly stated, Rahul minor son, Anita Yadav widow and Rishal mother of the deceased-Satish Kumar, filed claim petition claiming compensation to the tune of Rs.30,00,000/- on account of death of Satish Kumar on 15.08.2008 in a motor vehicular accident.

The learned Tribunal after adjudication partly accepted the claim petition and assessed a sum of Rs.5,41,840/-, however it was held that it was a case of contributory negligence and as such, the claimants were allowed a sum of Rs.2,70,920/- i.e. 50% of the amount assessed.

The present appeal has been preferred for enhancement of the compensation.

Learned counsel for the appellant has submitted that the Tribunal has wrongly deducted the amount of Rs.1,386/- in respect of allowances. It is further submitted that no amount in respect of future prospects has been allowed. It is also contended that deduction in respect of family pension cannot be made in view of authority "Vimal Kanwar and others vs Kishore Dan and others" reported in (2013) 7 SCC 476. It is also contended that amount in respect of funeral expenses and last rites are on lower side. It is also submitted that no amount in respect of consortium and loss of love and affection has been granted. However, no challenge has been made to the factum of contributory negligence. Learned counsel for the appellant has further submitted that multiplier of 18 should have been applied as per authority ***"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another"*** reported in **2009(3) R.C.R. (Civil) 77**.

On the other hand, learned counsel for the respondents have supported the award. It is submitted that the allowances must have been spent by the deceased for himself. However, learned counsel for respondent No.3 is fair enough to concede that family pension cannot be ordered to be deducted.

I have considered the submissions made by learned counsel for both the parties and have gone through the record of the case.

The income of the deceased proved on the file is Rs.8,939/- per month. The Tribunal has deducted Rs.1,386/- being the allowances which are cleaning allowance, PMH allowance. LR allowance, quarter allowance, etc. In my view, the deduction made by the Tribunal regarding allowances should not have been made. The Army personnel are getting free ration, etc. so, in these circumstances, the income of the deceased has to be taken as it is i.e. Rs.8,939/- per month. The deceased was only 22 years and as such, in view of the authority Sarla Verma's case (supra), another 50% amount stands added in respect of future prospects. So, the income of the deceased can be taken as Rs.13,408.5/- per month by adding 50% amount in respect of future prospects. The claimants are three in number and as such, deduction has rightly been made by the Tribunal to the extent of 1/3rd in respect of personal expenses. So, the dependency comes to Rs.8,939/- per month and the yearly dependency comes to Rs.1,07,268/-. The multiplier applicable at the age of 22 years as per Sarla Verma's case (supra) is 18. So, by applying that multiplier the amount of compensation comes to Rs.19,30,824/-. The amount in respect of expenses on last rites, consortium and loss of love and affection has to be allowed by keeping in view the price index prevailing in the year 2008. So, a sum of Rs.20,000/- stands allowed in respect of expenses on last rites and transportation. Another sum of Rs.75,000/- stands allowed regarding consortium. The claimants are also held entitled to claim Rs.75,000/- in respect of loss of love and affection. So, in this manner, the total amount comes to Rs.21,00,824/-, say Rs.21,00,800/-.

Since, the contribution part to the extent of 50% in respect of deceased is there and as such, the claimants are held entitled to claim Rs.10,50,400.

Out of the enhanced amount 50% amount shall be paid to the widow and the remaining amount shall be shared by remaining claimants in equal share. The share of the minor(s) shall be deposited in the shape of FDRs in a nationalized bank in such a manner that minor(s) shall get maximum rate of interest. The minor shall be entitled to withdraw the said amount after attaining the age of majority without any intervention of the Court. The enhanced amount shall carry interest @ 7.5% per annum from the date of application till payment. The liability to pay the enhanced amount shall be same as ordered by the Tribunal.

Appeal stands disposed of, accordingly.

A copy of this order be sent to the Tribunal for compliance.

(K.C. PURI)
JUDGE

06.08.2015
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