IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5081-2010
Date of decision:- 9.10.2015

Jaswant Kaur and another

...Appellants

Versus

Nirbhai Singh and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.SL Bhalla, Advocate for the appellants

Ms.Vandana Malhotra, Advocate
for respondent No.3- Insurance Co.

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SNEH PRASHAR, J.

The instant appeal is for enhancement of the compensation awarded in favour of the claimant-appellant vide award dated 21.12.2009 passed by learned Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal'), on account of death of Gurvinder Singh, son of the appellants, in a motor vehicular accident.

The submissions made by learned counsel for the parties have been heard and record perused.

Learned counsel for the appellants contended that the deceased was doing the business of DJ System and was earning Rs.10,000/- per month. However, learned Tribunal assessed his income as Rs.4000/- per month which is on the lower side. Secondly, the learned Tribunal by considering the age of the appellants-claimants, who are the parents of the deceased, has wrongly applied the multiplier of 9, whereas in view of the law laid down by the Hon'ble Supreme Court in **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and others (2015) 6 SCC 347**, wherein while calculating the compensation, the multiplier was applied according to the age of the deceased, the multiplier should have been 18. Learned counsel also asserted that no amount has been awarded towards loss of love and affection and future prospects. The amount awarded towards funeral expenses is also on the lower side.

On the other hand, learned counsel appearing for respondent No.3- Insurance Company resisted the prayer of the appellant and submitted that just and adequate compensation has been awarded to the appellants.

The factum of death of Gurvinder Singh due to the injuries suffered by him in a motor vehicular accident is not a matter in dispute. The claimant -appellant No.1 tendered merely her own affidavit for proving that the deceased was earning Rs.10,000/- per month by running the business of DJ System. No income tax return or any other documentary evidence was produced in that regard. It was not even proved that he deceased was owned any DJ system. Therefore, the income assessed by learned Tribunal i.e. Rs.4000/- per month appears to be just and adequate. There is also no proof of age of the deceased except the post mortem report, wherein his age is mentioned as 22/23 years and admittedly, he was a bachelor at the time of his death. For selection of multiplier in the said set of facts it is relevant to refer to **Munna Lal Jain case (supra)** wherein Hon'ble Supreme Court has held as under:-

> "The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken."

In view of the above law, the multiplier of 18 is appropriate in the case in hand and the deduction towards personal expenses of the deceased has to be 1/2.

Coming to the aspect of allowing increase of income of the deceased considering his future prospects in **Rajesh and others vs. Rajbir Singh and others 2013 (9) SCC 54**, in para 11, the Hon'ble Supreme Court has observed as under:

> "11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self employed and person on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self employed or persons of fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

In view of the above, the claimants-appellants are held entitled to an increase in the income of the deceased by 50% towards future prospects.

As no amount has been awarded towards loss of love and affection to the mother-appellant, a sum of Rs.20,000/- is allowed in this regard. The amount awarded towards funeral expenses i.e. Rs.5000/- appears to be on the lower side and is enhanced to Rs.25,000/-.

Accordingly, the total compensation comes to :- Rs.4000/- (monthly income) + 50% (future prospects) -1/2 (deduction towards personal expenses) x 12 x 18 (multiplier) +Rs.26,000/- (expenses incurred on treatment before death of the deceased already awarded)+ Rs.20,000 (loss of love and affection payable to the mother) +Rs.25,000/- (funeral expenses including already awarded)= Rs. 7,19,000/-. The enhanced amount of Rs.3,93,000/- (7,19,000-3,26,000) if not deposited by the Insurance Company within 45 days from the date of receipt of the certified copy of this judgment, shall carry interest @ 7.5 % per annum from the date of filing of the appeal till its realisation.

Resultantly, the present appeal is partly allowed and the award is modified to the above extent.

9.10.2015 **(SNEH PRASHAR)**
gsv **JUDGE**