

In the High Court of Punjab and Haryana at Chandigarh

.....

F.A.O. No.2421 of 2012

.....

Date of decision:29.4.2015

Archana Sharma and another

.....Appellants

v.

Karam Singh and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Tribhawan Singla, Advocate the appellants.

Mr. Amandeep Singh, Advocate for respondents No.1 and 3.

Ms. Sonal Datta, Advocate for respondent No.2.

.....

Inderjit Singh, J.

This appeal has been filed by Archana Sharma and Rishi Sharma-appellants/claimants for enhancement of compensation against Karam Singh-Driver of motorcycle No.PB-03H-5499, United India Insurance Company Limited and Hav. Bagicha Singh challenging the impugned award dated 7.1.2012 passed by the Motor Accident Claims Tribunal, Ferozepur (hereinafter referred to as 'the Tribunal'), vide which an award of ₹6,48,000/- along with interest @6% per annum from the date of filing of the claim petition till its actual realization has been passed.

The brief facts of the case are that claimants-Archana Sharma

[2]

(wife) and Rishi Sharma (minor son) of deceased Ashwani Kumar Sharma have filed the claim petition against Karam Singh, United India Insurance Company Limited and Hav. Bagicha Singh-respondents under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') for grant of compensation on account of death of Ashwani Kumar Sharma, who died in a road side accident occurred on 3.5.2010 at about 9.30 p.m. ahead of Canal Rest House, Ferozepur Cantt.

It is mainly the case of the claimants that on 3.5.2010 at about 9.30 p.m. HC Ashwani Kumar Sharma was coming to his house on a scooter from Canal Colony, Ferozepur after getting his money back from some one and his wife Archana Sharma along with Amit Kumar son of her brother-in-law were following him on a motorcycle. Ashwani Kumar was driving the scooter on a very moderate speed. At about 9.30 p.m., when Ashwani Kumar Sharma reached near Canal Rest House, Ferozepur Cantt., a motorcycle bearing registration No.PB-03H-5499 (hereinafter referred to as 'the offending vehicle') came from its front side, which was being driven by respondent No.1-Karam Singh on a very high speed, in a very rash and negligent manner and struck with the scooter of Ashwani Kumar Sharma, due to which Ashwani Kumar Sharma fell on the road along with his scooter and became unconscious due to sustaining injuries. On hearing sound of accident, many people gathered there and the motorcyclist, whose name was disclosed later on as Karam Singh, fled away from the spot. Claimant No.1 took her husband in unconscious condition with the help of Amit Kumar to Frances Newton Mission Hospital, Ferozepur, from where after giving first

[3]

aid, he was shifted to D.M.C. Hospital at Ludhiana, where he remained admitted w.e.f. 3.5.2010 to 31.5.2010 and an amount of ₹3,00,000/- approximately was spent on his treatment. Ashwani Kumar Sharma succumbed to his injuries on 31.5.2010 at D.M.C., Ludhiana. They prayed for the award of compensation of ₹40,00,000/- . FIR was registered on the statement of claimant No.1 against respondent No.1.

Respondent No.1 in the written statement mainly stated that the answering respondent is not the owner of motorcycle. On merit, all the averments including the accident had been denied. Respondent No.2- Insurance Company had taken the plea that the application has been filed by the complainant in collusion with the owner of the vehicle in question. Respondent No.3 has also filed separate written statement taking the similar pleas as have been taken by respondent No.1.

Both the parties produced evidence. After going through the evidence in minute detail and after hearing learned counsel for the parties, the learned Tribunal accepted the claim petition and an amount to the tune of ₹6,48,000/- has been awarded in favour of the claimants in equal share along interest @6% per annum vide award dated 7.1.2011.

Aggrieved against the impugned award giving less compensation amount, this appeal has been filed by the claimants for enhancement of compensation.

Notice of motion was issued in this case. Respondents appeared through their counsel and contested this appeal.

At the time of arguments, learned counsel for the appellants/claimants argued that the Tribunal has wrongly held that the

[4]

accident occurred due to contributory negligence and the compensation on that ground was given only 50% of the total amount. Learned counsel for the appellants further argued that ₹10,000/- has been given on the basis of funeral expenses. No amount on the ground of loss of consortium and love and affection has been given. He also argued that the GPF amount has been wrongly deducted from the salary and 30% future prospectus have not been awarded and the multiplier of eight has been wrongly applied.

On the other hand, learned counsel for the respondents mainly argued that the award amount has been correctly given. The deceased was himself negligent and the Tribunal has given the correct findings.

After going through the evidence on record and after hearing learned counsel for the parties, I find that as per the evidence on record, as discussed by the learned Tribunal and in view of the cross-examination of both CWs, the accident was head on collision between the scooter and the motorcycle and the accident took place on the metalled road and it was in the centre of the road. Keeping in view the fact that it is a head on collision in the middle of the road between the scooter and the motorcycle and the CWs have admitted this fact, the learned Tribunal has correctly held the contributory negligence of the deceased and 50% compensation has correctly been awarded by the Tribunal.

Now as coming to the fact that no amount on the ground of love and affection has been given to the minor, I find that the claimants are entitled to ₹1 Lac on the ground of love and affection. The Tribunal has also not awarded any amount on the ground of loss of consortium as per the

judgment of the Hon'ble Supreme Court in Rajesh and others v. Rajbir Singh and others 2013(3) R.C.R. (Civil) 170, in which the Hon'ble Supreme Court has held that the Tribunal should award at least ₹25,000/- towards funeral expenses. It is also held in this judgment that the Tribunal should award at least ₹1 Lac for loss of consortium. Therefore, the awarding of ₹10,000/- on account of funeral expenses is also liable to be enhanced to ₹25,000/-.

Now as per the evidence on record, the last salary drawn by the deceased was ₹28,614/- in view of the last pay certificate Ex.CW-1./A. As per the last pay certificate, the basic pay of the deceased was ₹17,080/-, DA ₹5,978/-, C. Pay. is shown as ₹1,922/- and other allowances such as KMA, FMA, RMA, CA and HRA have been given. There is no evidence on the record to show as to how much amount the deceased was paying as income-tax. As per the law laid down by the Hon'ble Supreme Court, the annual income-tax is to be deducted and not the GPF etc. from the salary. The finding of the Tribunal deducting ₹7,141/- contribution to GPF while assessing of the income is incorrect and not as per law. The Hon'ble Supreme Court in Manasvi Jain v. Delhi Transport Corporation, 2014(3) R.C.R. (Civil) 313, has held that while arriving at income of the deceased for the purpose of net monthly income of the deceased, deductions towards various heads i.e. GPF, house rent allowance, insurance should not be excluded from the salary except the income-tax. Therefore, in view of the law laid down by the Hon'ble Supreme Court, the Tribunal has wrongly assessed the income of the deceased as nothing has come on the record regarding the deduction of the income tax. Therefore, from the total salary

[6]

after deducting income-tax approximately, the monthly income/salary of the deceased is taken as ₹27,000/-.

Next, I find that in this case, the Tribunal has taken the age of the deceased as 52 years, whereas in the post-mortem report the age has been shown as 45 years, whereas in the claim petition the age has been mentioned as 48 years. Merely, in the OPD record of the hospital, the age of the deceased has been mentioned as 52 years, the Tribunal has taken the age of the deceased as 50 years. As per the judgment of the Hon'ble Supreme Court in Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77, in the age group of 46 to 50 years, the multiplier of thirteen should be applied and the Tribunal has wrongly applied the multiplier of eight in this case.

Next, I find that as the deceased was employed in Government job, his salary is to be increased annually by adding the annual increments and then addition of 30% should be made on the basis of future prospectus, which has not been given in this case. So, the claimants/appellants are entitled to following compensation accordingly:-

1. Monthly income assessed as ₹27,000/-

2. 30% increase ₹ 8,100/-

Total monthly income ₹35,100/-

3. Deduction 1/3rd ₹11,700/-

Monthly income is taken as ₹23,400/- and the monthly dependency comes to ₹23,400/-.

After applying the multiplier of thirteen, the compensation will be as under:-

[7]

1. Compensation @ ₹24,000 x 12 x 13	:₹36,50,400/-
2. Loss of consortium	:₹ 1,00,000/-
3. Loss of love and affection	:₹ 1,00,000/-
4. Funeral Expenses	:₹ 25,000/-
Total compensation	:₹38,75,400/-
50% on being contributory negligence	:₹19,37,700/-

along with interest as already awarded by the Tribunal.

Keeping in view the above facts and circumstances, this appeal
is allowed accordingly.

April 29, 2015.

(Inderjit Singh)
Judge

hsp