IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6482 of 2011 (O&M)
Date of Decision:05.02.2015

Smt. Nirmala and others

….Appellants

Versus

Jaipal and others

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Ram Pal Verma, Advocate for the appellants.

Mr. Mrigank Sharma, Advocate for respondent No.4-
ICICI Lombard General Insurance Company Ltd.

NAVITA SINGH, J.

1. The Motor Accident Claims Tribunal, Sonepat passed the impugned award on 24.9.2010 granting compensation to the tune of Rs.5,81,600/- to the appellants. They being dissatisfied with the quantum preferred this appeal for enhancement.

2. Yogesh Kumar died on 17.11.2009 on account of the injuries received by him in a motor vehicle accident, which occurred on 12.11.2009. It was pleaded by the appellants that the deceased was running a tea stall and was contributing Rs.10,000/- per month towards household expenses. The plea so taken by the appellants would mean that Yogesh Kumar was earning more than Rs.10,000/- per month because he must be spending certain amount on himself as well. Holding that there was no proof of income or even of the fact that the deceased was running any tea stall, his income was assessed at Rs.3900/- per month, deeming that he was a skilled labourer.

3. Counsel for the appellants argued that the wages for a skilled labourer were more at the relevant time and even otherwise the Tribunal erred in assessing the income of the deceased. He was running a tea stall and, therefore, his income was definitely more than that. This argument, however, is not convincing and was rightly countered by the other side. It was for the claimants to show that Yogesh Kumar was a tea vendor and was owner of the tea stall. It is understandable that a tea vendor is not expected to keep accounts in writing but at least some evidence should have been led by the appellants to prove the vocation so that presumption of income could be drawn. The amount assessed by the Tribunal on the basis of the income was, therefore, correct. Deduction was made to the extent of $1/4^{th}$ regarding personal expenses of the deceased and in doing so, no mistake was made by the Tribunal.

4. The next contention on behalf of the appellants was that an amount of Rs.5000/- only was awarded towards loss of consortium and nothing was given for loss of love and affection to the minor children. Counsel submitted that a meager amount of Rs.2000/- was given for funeral expenses. Counsel for the appellants, however, seems to have missed the part of the award where the amount for funeral expenses and loss of estate was awarded and that was Rs.15,000/- and not Rs.2000/-. Such amount does not call for any enhancement in view of the social and economic status of the appellants. Even if it be taken that the deceased was a tea vendor, the family could not have spent large amount on the last rites.

5. Regarding consortium, counsel for the Insurance Company very gracefully conceded that the court may award any amount deemed appropriate. It is, therefore, held that in addition to an amount of Rs.5000/- already awarded, an amount of Rs.1,10,000/- shall be payable cumulatively to the widow for loss of consortium and to the children for loss of love and affection. The amount already

awarded shall stands enhanced by Rs.1,10,000/-. Enhanced amount shall fetch the interest at the rate of 6% per annum.

6. The appeal is accordingly partly allowed.

(NAVITA SINGH)
JUDGE

05.02.2015
Ishwar

Whether to be referred to reporter: Yes