In the High Court of Punjab and Haryana at Chandigarh

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F.A.O. No.4147 of 2012 (O&M)

.....

Date of decision:28.7.2015

Mukesh Devi and others

.....Appellants

v.

Rehmuddin and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Naren Partap Singh, Advocate for the appellants.

Respondents No.1 and 2 proceeded against Ex parte.

Ms. Madhu Sharma, Advocate for respondent No.3.

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Inderjit Singh, J.

This appeal has been filed by Mukesh Devi and others-appellants/claimants against Rehmuddin-Driver, Rakesh Garg-owner and Oriental Insurance Company Ltd.-Insurer of Hywa/Dumper bearing registration No.HR-74-0068 (hereinafter referred to as `the offending vehicle') for enhancement of compensation amount of ₹29,51,160/- along with interest @6% per annum from the date of filing of the claim petition till actual payment awarded by the Motor Accident Claims Tribunal, Nuh vide award dated 23.3.2012.

The brief facts of the case are that Mukesh Devi-widow, Sapna, Kalpana, Monika and Anjali-minor daughters, Sumit and Ankir-minor sons of Kanhiya Lal (since deceased) have filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as `the Act') regarding the death of Kanhiya Lal on 29.12.2010, when he was coming on his motorcycle from Nuh to Taoru in a motor vehicle accident with the offending vehicle driven by respondent No.1-Rahimuddin in rash and negligent manner.

The respondents appeared through counsel and contested the claim petition.

The Tribunal after taking the income of the deceased at ₹20,390/- per month and after making deduction of 1/5th and by applying the multiplier of 15 at the age of 40 years calculated the dependency as ₹29,36,160/-. ₹5,000/- has been awarded towards funeral expenses and ₹5,000/- towards loss of estate and ₹5,000/- were awarded towards loss of consortium. The total compensation of ₹29,51,160/- has been awarded.

Notice of motion was issued in this case. Ms. Madhu Sharma, learned Advocate has appeared on behalf of respondent No.3-Insurance Company and contested this appeal. Respondents No.1 and 2 did not appear and were proceeded against ex parte.

At the time of arguments, learned counsel for the appellants argued that no compensation has been given on the ground of future prospectus. No amount on the ground of love and affection has been given to six minor children and further the amount awarded for the funeral expenses and loss of consortium is also less and the over time which the deceased used to earn was not considered.

Learned counsel for respondent No.3-Insurance Company argued that the compensation awarded by the Tribunal is adequate and is not liable to be enhanced.

I have gone through the record and have heard leaned counsel for the parties.

From the record, I find that Kanhiya Lal (since deceased) was serving in a private company and the mere statement that he was also earning overtime, no specific overtime can be taken which can be added in the salary of the deceased. Therefore, the Tribunal has correctly assessed the income of the deceased as ₹20,390/-. As the age of the deceased is taken by the Tribunal on the basis of post-mortem report etc. as 40 years, therefore, he is entitled to future prospectus @30%.

As per the law laid down by the Hon'ble Supreme Court in Rajesh and others v. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170, the persons, who are employed and less than 40 years of age, future prospectus @50% should have been granted. In this judgment, it was held that an amount of ₹1 Lac should be given as loss of consortium, ₹25,000/- for transportation and funeral expenses. Keeping in view the law laid down in this judgment by the Hon'ble Supreme Court and again as held by the Three Judges Bench of the Hon'ble Supreme Court in Munna Lal Jain and another v. Vipin Kumar Sharma and others, Civil Appeal No.4497 of 2015 (Arising from S.L.P. (C) No.8362 of 2013), decided on 15.5.2015, the Hon'ble Supreme Court has held that the future prospectus should be 50% in case of self-employed person. Therefore, in view of the above discussion, the claimants are entitled to future prospectus @30%. Hence, the claimants are also entitled to compensation of ₹25,000/- as funeral expenses; ₹1 Lac as loss of consortium. Further all the minor children are also entitled for compensation on the ground of love and affection at ₹1 Lac each as per law.

Therefore, from the above, the compensation in this case for which the claimants are entitled to comes as under:-

(i) Income of the deceased assessed	:₹20,390/- p.m.
(ii) Income after adding future prospectus @30% at ₹26,507/- which is rounded of to:	₹26,500/- p.m.
(iii) Dependency after making deduction of 1/5th comes to ₹21,200/- per month	
(iv) Compensation after applying the multiplier of 15 comes to 21,200/- x 12 x 15	:₹38,16,000/-
(v) Funeral expenses	:₹ 25,000/-
(vi) Loss of consortium	:₹ 1,00,000/-
(vii) Love and affection @ ₹1 Lac per child for six minor children	:₹ 6,00,000/-
Total compensation	:₹45,41,000/-

The claimants/appellants will also be entitled to payment of interest on the enhanced amount as awarded by the Tribunal i.e. @6% per annum from the date of filing of claim petition till actual realization. The respondents are directed to pay the enhanced amount of compensation along with interest and share as awarded by the Tribunal, which shall be disbursed/deposited in FDR, to the claimants proportionately as per award.

The appeal is accepted accordingly.

July 28, 2015.

(Inderjit Singh)
Judge

hsp