IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6691 of 2012 (O/M)
Date of decision : 12.3.2015

Jitender Singh and others ...... Appellants

Versus

Sanjay Kumar and others ...... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sagar Aggarwal, Advocate, for the appellants.

Mr. R.S. Budhwar, Advocate, for respondent No. 1.

None for respondent No. 2.

Mr. Rajneesh Malhotra, Advocate, for respondent No. 3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Claimants/appellants have filed this appeal seeking enhancement of compensation against the award dated 5.10.2012, passed by the Motor Accident Claims Tribunal, Karnal, (in short 'the Tribunal') on account of death of Dharam Singh.

Brief facts of the case are that Dharam Singh, aged about 50 years, alongwith his son Jitender had gone to Karnal to the showroom of M/s Modern Automobiles to purchase a new car. After purchasing the car, Dharam Singh was coming back on his motorcycle bearing registration No. HR-05R-6228. The motorcycle was being driven at moderate speed on the left side of the road. At about 12:30 PM, when Dharam Singh reached near Himalya Public School, GT Road, Karnal, a truck bearing registration No. HR-69-6959 came from behind and while coming on the wrong side of the road, hit the motorcycle of Dharam Singh. As a result of the accident, Dharam Singh died. FIR No. 622 dated 19.11.2008 was registered under Sections 279/304-A IPC at Police Station Civil Lines, Karnal, against the driver of the offending truck Sanjay Kumar (respondent No. 1 herein). The accident was witnessed by Ravinder Singh son of Har Sarup and Jasmer Singh son of Chela Ram, resident of village Nali Khurd, District Karnal. Respondent No. 2 is the owner of the offending vehicle and respondent No. 3 is the insurance company.

It is stated that the deceased was an agriculturist having 30 acres of land. He was also running a milk dairy and earning Rs. 50,000/- per month. Claimants/appellants had spent Rs. 50,000/- on the transportation, last rites and funeral.

Respondents No. 1 and 2, in their joint written statement, denied the accident and stated that a false story has been put-forward. No accident took place with the offending truck. If the Tribunal comes to the conclusion that the accident took place due to rash and negligent driving of respondent No. 1, in that eventuality respondent No. 3, being the insurer of the offending truck, is bound to pay the compensation. Respondent No. 3 took all the legal objections and stated that a false case was registered to grave the compensation.

From the pleadings, following issues were framed :-

1. Whether the motor vehicular accident which took place on 19.11.2008, was cause on account of rash and negligent driving of vehicle bearing registration No. HR-69-6959 by respondent No. 1 Sanjay resulting into the death of Dharam Singh and damge to motorcycle No. HR-05R-6228. IF so, its effect ? OPP
2. If issue No. 1 is prove, whether the claimants are entitled to receive any amount of compensation. How much and from whom ? OPP
3. Whether respondent No. 1 was driving the offending vehicle in violation of terms and conditions of policy of insurance ? OPR
4. Whether the claim petitions are not maintainable ? OPR
5. Whether the present claim petitions have been filed by the claimants in collusion with driver and owner i.e. respondents No. 1 and 2. If so, its effect ? OPR
6. Relief.

After giving opportunities to both the parties to lead the evidence, the Tribunal, while determining the case qua the death of Dharam Singh, assessed the income of the deceased at Rs. 4,000/- per month. The Tribunal, after adding 30% increase in income on account of future prospects and deducting 1/3rd as personal expenses, calculated the monthly dependency of the claimants as Rs. 3,567/- per month and after applying the multiplier of 11, it came to the conclusion that the amount of compensation comes to Rs. 4,70,844/-. Rs. 10,000/- were awarded to claimant/appellant No. 3 Hans Bala @ Bala for loss of consortium. Another Rs. 10,000/- were allowed on account of expenditure incurred on the cremation and last rites of the deceased. The total compensation of Rs. 4,90,844/- was allowed with interest @ 7.5% per annum from the date of filing of the petition till realization. The amount was ordered to be apportioned as under :-

Jitender-claimant No. 1 (son)	Rs. 1,00,000/-
Amit Kumar-claimant No. 2 (son)	Rs. 1,00,000/-
Smt. Hans Bala @ Bala-claimant No. 3 (wife)	Rs. 2,90,844/-
	Rs. 4,90,844/-

But the Tribunal erred in calculating the monthly dependency as Rs. 3,567/-, whereas the correct amount is Rs. 3,467/-. So, the total correct amount of compensation should be Rs. 4,77,644/-, in place of Rs. 4,90,844/-, as awarded by the Tribunal.

Claimants/appellants being not satisfied with the compensation awarded by the Tribunal has now knocked at the doors of this Court.

Learned counsel for the claimants/appellants has argued that in this case, the income tax returns for the years 2007-08 and 2008-09 (Ex.P1 and Ex.P2) were produced before the Tribunal. However, these were wrongly disbelieved by the Tribunal. In the income tax return for the year 2007-08, the only income was mentioned as Rs. 1,98,900 and in the income tax return for the year 2008-09, it was mentioned as Rs. 2,49,900/-. The learned counsel has also produced the copies of the original record.

A perusal of the record shows that the income tax returns for the said period were rightly discarded by the Tribunal. A perusal of the income tax returns shows that these do not bear the signatures of the assessee, which is mandatory and that these were stated to have been submitted on 30.9.2008 i.e. only 1 ½ months before the alleged accident. Both the returns were submitted on the same day. When Shri N.M. Syal, Income Tax Officer was examined, he stated that the original of the returns are not traceable. In the said returns, no PAN number has been mentioned and the same is recorded to have been applied for, which means that no income tax return was filed earlier. The said returns were not filed online. The fact that the original returns are recorded to be missing and that the said returns are recorded to have been filed before the alleged accident goes to show that these cannot be relied upon to determine the income of the deceased. There is no evidence of the milk dairy of the claimants/appellants. The agriculture land of the deceased is still there. The Tribunal has assessed the income of the deceased at Rs. 4,000/- per month.

I am of the view that even for the management, the minimum of Rs. 5,000/- per month should have been assessed for the notional income. Accordingly, Rs. 5,000/- per month is assessed as notional income of the deceased. 30% is added on account of future prospects. The total income comes to Rs. 6,500/- per month. 1/3rd is deducted as personal expenses. Keeping in view the age of the deceased as 50 years, the multiplier of 13 is to be applied, in place of 11. Thus, the dependency of the claimants comes to Rs. 4,333 x 12 x 13. The amount of compensation comes to Rs. 6,75,948/-.

I am of the view that the grant of Rs. 10,000/- to the widow of the deceased for the loss of consortium and Rs. 10,000/- for last rites and ceremonies are grossly inadequate. No compensation has been granted to the claimants/appellants No. 1 and 2 for loss of love and affection.

Accordingly, Rs. 1 lac are awarded to the claimant/appellant No. 3 Hans Bala @ Bala, widow of the deceased, for loss of consortium. Rs. 50,000/- are awarded to claimants/appellants No. 1 and 2 for loss of love and affection of their father, to be shared equally. Rs. 25,000/- are allowed for transportation, last rites and funeral. The total amount of compensation comes to Rs. 8,50,948/-. Out of the amount of compensation, Rs. 1 lac shall exclusively go to claimant/appellant No. 3 and Rs. 50,000/- shall exclusively go to claimants/appellants No. 1 and 2, to be shared equally. Out of the remaining amount, 50% shall go to claimant/appellant No. 3, who is to run day-to-day affairs of the family and meet the family responsibilities after the death of her husband. The rate of interest allowed by the Tribunal is maintained.

Consequently, the appeal is allowed.

(KULDIP SINGH)
JUDGE

12.3.2015
sjks