THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2129 of 2013

Sukhwinder Singh and others

......Appellants

Versus

Bablu and others

...Respondents

FAO No. 2130 of 2013

Akash and others

......Appellants

Versus

Bablu and others

...Respondents

Date of decision : 13.01.2015

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Dheeraj Narula, Advocate
for the appellants

Mr. R.C. Gupta, Advocate
for the National Insurance Co. Ltd.

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ANITA CHAUDHRY, J.

A number of claim petitions were filed which were decided by a common Award dated 05.02.2013 by Motor Accident Claims Tribunal, Sirsa. These are two appeals against the award.

Broadly giving the facts, a number of persons had gone to attend a Satsang at Hisar in a pickup jeep on 13.02.2011. While returning a canter hit the pickup jeep which turned turtle resulting in injuries to the occupants . The injuries proved fatal for some of them. FIR No. 79 was registered on the same day against Bablu driver of the canter.

FAO No. 2129 of 2013

The legal heirs of Pritam Kaur filed petition No. 125 of 2011 claiming compensation for the death of Pritam Kaur. They had pleaded that she was auxiliary nurse and had an income of ₹ 6000/- per month. The Tribunal noted the age to be 46 years and found no evidence that Pritam Kaur was working and took the income to be ₹ 4500/- per month equivalent to that of a casual labourer and deducted 1/3rd as personal expenses and applying the multiplier of 13 calculated the loss to be ₹ 4,68,000/-. ₹ 20,000/- was allowed for pain and suffering, loss of consortium, love and affection. A sum of ₹ 10,000/- was added towards funeral expenses. The recovery rights were given to the Insurance Company as the driver did not have a driving licence.

The submission made on behalf of the appellants is that two certificates Ex. P6 and P7 were tendered in evidence to show that Pritam Kaur had undertaken a training in Civil Hospital, Sangrur and was a qualified nurse and her income was taken at ₹ 4,500/- which was being paid to a labourer and only a sum of ₹ 20,000/- had been allowed on the heads of loss of consortium and love and affection and they were entitled to enhanced amount.

The submission on the other hand was that no material had been produced to show that Pritam Kaur was working or had any income and no change should be made in the income. It was urged that the Tribunal had awarded suitable compensation on the miscellaneous heads.

The certificates Ex. P6 and P7 that were shown at the time of arguments only reveal that Pritam Kaur daughter of Hardit Singh had undergone two years course and she was a qualified auxiliary nurse. The certificates were issued to her in the year 1988. No evidence was led to actually show that Pritam Kaur was working or had joined any hospital, therefore, no change should be made in the income or in the deduction towards personal expenses. However, I find that separate amount should have been allowed for loss of consortium and loss of love and affection and some amount should be added as funeral expenses. An amount of ₹ 20,000/- had already been allowed by the Tribunal on these heads. Therefore, I allow ₹ 90,000/- on the head of loss of consortium and ₹ 90,000/- on the head of loss of love and affection. A sum of ₹ 10,000/- is added towards funeral expenses making the total amount payable to be ₹ 1,90,000/-. This enhanced amount shall be paid within two months, failing which the claimants shall be entitled to interest at the rate allowed by the Tribunal from the date of filing of the appeal till realization.

The Insurance Company would be entitled to recover the amount from the owner driver of the offending vehicle.

The appeal is partly allowed.

FAO No. 2130 of 2013

The submission made on behalf of the appellant was that claimants were major sons and daughters and the Tribunal had held her to be a mother doing household work and the income of Parkash Kaur was taken at ₹ 3,000/- and thereafter it made a deduction of 1/3rd to arrive at the annual dependency and no deduction should be made when the notional income was being assessed for the value of services being rendered by the mother. It was urged that a sum of ₹ 20,000/-had been added for pain and suffering and love and affection and ₹ 10,000/- was allowed as funeral expenses and no deduction should have been made. Reliance was placed upon ***Paramjit Singh and another vs. Dilbagh Singh and others, 2014 ACJ 1817.***

The submission on the other hand was that the major sons and daughters are married and in the age group of 25 to 37 and they were not dependent upon the deceased and lump sum amount should have been granted instead of determining the value of her services. It was urged that the Tribunal had already allowed a high compensation.

The appellants are married sons and daughters of Parkash Kaur, she was 58 years old. The Tribunal had assessed the earning capacity to be ₹ 3000/- and then deducted 1/3rd for her personal expenses and the remaining amount was held to be the amount which she would have contributed to her family and applying the multiplier of 9 the compensation was calculated at ₹ 2,46,000/-. An addition of 30% was made on miscellaneous heads.

Admittedly, Parkash Kaur was not employed. The Hon'ble

Apex Court in a number of judgment while assessing the compensation in the case of a mother/housewife had noted that housewife/mother renders services to her family which are invaluable and all the chores are performed by her selflessly for her husband or children and the dependents have been held entitled to adequate compensation in lieu of loss of gratuitous services but no definite criteria had been laid down for determining the compensation payable to the dependents of non-earning housewife/mother. However, a Bench of three Judges of the Hon'ble Supreme Court in the case of ***Lata Wadhwa vs. State of Bihar*****, *2001 ACJ 1735 (SC)*** laid down the guidelines for the purpose of compensation to be awarded in the case of non-earning members.

Following the judgment of Hon'ble Supreme Court the Courts have awarded compensation assessing the contribution to be ₹ 3000/- per month. Some of the Courts had made a cut of 1/3rd while making the calculations. The matter was referred to the Division Bench and it was held as under:-

> *"16. We may hasten to add that in all those cases, referred to above, in which 1/3rd cut has been applied, no reasoning has been given by the learned Single Judge rather in the cases, referred to above, in which 1/3rd cut has not been applied, the learned Single Judge had observed that ₹ 3,000/- per month is assessed as monthly value of her services and not her monthly income and, therefore, the concept of deduction cannot be applied. In view of the aforesaid discussion, we are of the considered view that while calculating the notional income of the housewife, the entire income should be taken as dependency of the legal heirs without applying*

any cut much-less 1/3rd, as has been done in certain cases."

Now making the calculation, taking the contribution to be ₹ 3000/- per month, the annual contribution would come to ₹ 36,000/- and applying the multiplier of 9, the compensation would come to ₹ 3,24,000/-. ₹ 50,000/- should be added for loss of love and affection, ₹ 10,000/- should be added on account of funeral expenses, raising the total to be ₹ 3,84,000/-. The Tribunal had awarded ₹ 2,46,000/- which shall be deducted and the remaining amount shall be payable within two months initially by the Insurance Company, later they can recover it from the owner and driver as ordered by the Tribunal. The amount shall be paid within two months failing which the appellants shall be entitled to interest at the same rate as awarded by the Tribunal from the date of filing of the appeal till realization.

Resultantly, FAO Nos. 2129 and 2130 of 2013 are partly allowed.

13.01.2015 **(ANITA CHAUDHRY)**
reena **JUDGE**