IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2864 of 2013
Date of decision: 03.07.2015

Paramjit Kaur and others ….Appellants

Versus

Balwant Singh and others ….Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. Vivek Suri, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No.3.

K.C. PURI J. (Oral)

This is an appeal directed by widow, two minor sons and brother of deceased-Gurdarshan Singh who died in a motor vehicular accident on 09.04.2007.

The learned Tribunal after adjudication partly accepted the claim petition and allowed a sum of Rs.10,87,000/-. The income of the deceased has been taken as Rs.9,025. 1/3rd amount was deducted in respect of personal expenses. The age of the deceased was taken as 38 years. The dependency has been taken as Rs.6,000/- per month and the yearly dependency has been taken as Rs.72,000/-. The multiplier of 15 has been applied. Another sum of Rs.2,000/- was allowed in respect of funeral expenses. Rs.5,000/- was allowed in respect of consortium and in this manner, the total amount of Rs.10,87,000/- was allowed along with interest @ 8% per annum.

The claimants have preferred the present appeal for enhancement of compensation.

Learned counsel for the appellant has submitted that the income of the deceased was Rs.20,833/- and the learned Tribunal has wrongly taken his salary as Rs.9,025/- for determining the amount of compensation. It is further submitted that claimants are four in number and as such, the dependency should have been calculated by deducting 1/4th in respect of personal expenses. It is further argued that the deceased was a permanent employee in a co-operative society and as such, 50% amount should have been added in respect of future prospects for computing the amount of compensation. It is further submitted that the amount allowed in respect of consortium and funeral expenses are on lower side. Learned counsel for the appellant has further submitted that no amount has been allowed in respect of loss of love and affection.

On the other hand, learned counsel for insurance company has supported the award and has submitted that the amount has been rightly calculated. He has further contended that the amount in respect of income-tax has to be deducted. It is further submitted that the appellant was not a government employee but was employed in a co-operative society and as such, future prospects cannot be allowed. Learned counsel for insurance company has further submitted that in the Salary Certificate the amount of dearness allowed has been shown twice one is Rs.3,950/- and another is Rs.4,355/- and only one dearness allowance can be allowed.

I have considered the submissions made by learned counsel for both the parties and have gone through the record.

Regarding Salary Certificate, counsel for the appellant wants that whole of the amount of Rs.20,833/- should be considered for the purpose of calculating compensation whereas counsel for insurance company has submitted that dearness allowance has been given twice and income-tax should be deducted as the income-tax was to be levied beyond the income of Rs.1,50,000/-.

So far as the submissions made by counsel for insurance company that dearness allowance has been shown twice is concerned that submission is without any legal force. From the perusal of the Salary Certificate it is revealed that basic pay of the deceased has been shown as Rs.7,900/- whereas dearness pay has been shown as Rs.3,950/- and dearness allowance has been shown as Rs.4,355/-. The dearness pay and dearness allowed are totally different component of pay of deceased. Moreover, insurance company has not challenged the authenticity of the Salary Certificate before the Tribunal and as such, abovesaid argument stands over-ruled. The other contention raised by counsel for insurance company is that some amount should be deducted in respect of income-tax is concerned that carries weight and has to be accepted.

In my view 10% amount of the income should be deducted in respect of payment of income-tax.

As per Salary Certificate deduction has been shown as under:-

1. P.F.	Rs.1475/-
2. E.P.F.	Rs.2016/-
3. F.P.F.	Rs.541/-
3. L.I.C.	Rs.826/-
4. Personal Loan	Rs.1800/-
5. House Loan	Rs. 5100/-
6. Union Fund	Rs.50/-
Total deductions	**Rs.11808/-**

I am of the considered view that these deductions cannot be taken into account as these are almost the savings or payment of loan amount and P.F., E.P.F. and LIC are the savings of the deceased and the other amount of personal loan and house loan are the deductions towards loan taken by deceased during his lifetime. So, the income of the deceased is taken as Rs.20,833/-.

The second point raised before this Court is regarding the future prospects. The deceased was an employee of Co-operative Society Bank. His post was regular and he was getting increment in due course of his service, even, in Sarla Verma's case (supra), the amount of 50% has been added in respect of future prospects where the deceased is less than 40 years. Admittedly, in the present case the deceased was less than 40 years. So, in these circumstances, the income of the deceased can be taken as Rs.31,249.50/- by adding 50% of his income in respect of future prospects. However, deduction of 10% has to be made in respect of income-tax. So, the income of the deceased is taken as Rs.28,124.55/- say Rs.28,124/-. Since, the claimants are four in number so, the dependency has to be calculated by deducting 1/4th in respect of personal expenses. So, the monthly dependency comes to Rs.21,093/- by deducting 1/4th in respect of personal expenses. The yearly dependency comes to Rs.2,53,116/-. The deceased was 38 years and as per the Schedule mentioned in Sarla Verma's case (supra), the multiplier of 15 has been rightly applied by the Tribunal. So, by applying that multiplier, the amount of compensation comes to Rs.37,96,740/-. The amount spent on funeral expenses, transportation, consortium and loss of love and affection has to be considered by keeping in view the price index of 2007. So, the claimants are held entitled to claim Rs.20,000/- in respect of funeral expenses and expenses on last rites. The claimants widow is also held entitled to claim Rs.50,000/- in respect of consortium and the minor children are held entitled to claim Rs.50,000/- in respect of loss of love and affection. So, in this manner, the claimants are held entitled to claim Rs.39,16,740/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of application till payment. Out of the enhanced amount Rs.15,00,000/- shall be paid to the widow and the remaining amount shall be shared by remaining claimants in equal share. The share of the minors shall be deposited in the shape of FDRs in a nationalized bank in such a manner that they will get maximum rate of interest. The minors would be entitled to withdraw the amount after attaining the age of majority without intervention of order of the Court.

Appeal stands disposed of, accordingly.

A copy of this order be sent to the Tribunal for compliance.

(K.C. PURI)
JUDGE

03.07.2015
yakub