In the High Court for the States of Punjab and Haryana, at Chandigarh

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FAO-3321-2013

Date of decision: 04.02.2015

Subhash Ghosh and others ..Appellants

Versus

Rikoo @ Harpreet Singh @ Happy and others ..Respondents

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. Ashwani Arora, Advocate
for the appellant.
Mr. M.B.Jain, Advocate
for respondent No.3-Insurance Company.

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<u>Mahavir S.Chauhan, J.(Oral)</u>

Kavita Ghosh a 33 years old lady employed as Office Assistant in National Convent Senior Secondary School, Amritsar Road, Moga, earning a salary of Rs. 7050/- P.M. died in a motor vehicle accident caused on account of rash and negligent driving of a JCB machine bearing registration No. PB-19D-(T)-7358 by respondent Rikoo @ Harpreet Singh @ Happy at 10.30 A.M. on 25.3.2011, her legal representatives/dependents, namely, husband Subhash Ghosh and minor sons Sagar Ghosh and Harsh Vardhan Ghosh preferred claim application No.RT-44/25.5.2011 before the learned Motor Accident Claims Tribunal, Moga (for short,"the Tribunal") seeking compensation amounting to Rs. 30 lacs by alleging loss of dependency.

The application was contested by the respondents by denying all the allegations thereof and pleading certain preliminary objections.

From the pleadings of the parties, learned Tribunal framed following issues:-

1. Whether Kavita Ghosh had died in the alleged motor vehicle accident due to rash and negligent driving of the driver of JCB bearing registration No. PB-19D-(T)-7358?OPP
2. Whether the claimants are entitled for compensation, if so to what amount?OPP
3. Whether the claim petition as framed is not maintainable?OPR.
4. Whether the claimants have no locus standi to file the claim petition against respondent No.3?OPR-3.
5. Relief.

Parties adduced evidence in support of their respective pleas and were heard by the learned Tribunal. While accepting plea of the applicants-appellants as regards factum and manner of the occurrence, learned Tribunal did not accept their plea that the deceased was employed as an Office Assistant and was earning Rs. 7050/- p.m. Instead, learned Tribunal assessed income of the deceased as Rs. 3000/- p.m. and by applying multiplier of 15 to the assessed loss of dependency, awarded a compensation amounting to Rs. 4,33,400/- in favour of the applicants-appellants by way of award dated 02.05.2013 which is under challenge in this appeal brought by the dis-satisfied applicants.

Respondent-Insurer is contesting the appeal.

I have heard learned counsel for the parties.

Learned counsel for the applicants-appellants refers to statement of PW2 Monica, salary certificate, Exhibit P3, and copies of attendance register, Exhibits P6 to P10 to contend that in this evidence it is sufficiently proved that the deceased was working as Office Assistant in National Convent Senior Secondary School, Amritsar Road, Moga and was earning Rs.7050/- P.M. Learned counsel submits that learned Tribunal has adopted a short-cut to avoid consideration of these documents and this has resulted into miscarriage of justice. Learned counsel stresses that the income of the deceased has to be taken as Rs.7050/- p.m.

The contention however is resisted by learned counsel appearing for respondent No.3 by submitting that only salary certificate for the year 2010-2011 has been proved and it has not been explained whether employment of the deceased was temporary or permanent and that being so the findings recorded by the learned Tribunal cannot be interfered with. Learned counsel also submits that contribution of the deceased as a house-wife can be taken to be Rs.3,000/- p.m on the maximum and it is what has been done by the learned Tribunal.

A perusal of the record would reveal that a very specific plea of the applicants in the claim application was that the deceased was working as an Office Assistant in National Convent Senior Secondary School, Amritsar Road, Moga and was receiving an amount of Rs. 7050/- p.m. as salary. This averment is not shown to have been specifically denied by the respondents including the insurer. As is well settled an evasive denial is no denial. To put it otherwise, by not specifically denying status of the deceased as an employee of the aforesaid school and her salary as Rs. 7050/- P.M. , the respondents are deemed to have accepted as correct averments of the applicants-appellants in this respect. Not only this, applicants-appellants have examined PW2 Monica, an employee of the aforesaid school. She has proved Exhibit P3 copy of the salary certificate of the deceased wherein also it has been recorded that the deceased was getting Rs. 7050/- P.M. as salary. Applicants-appellants have also proved on record Exhibits P6 to P10, copies of relevant portion of the attendance register in proof of employment of the deceased as aforesaid. In view of this overwhelming evidence, I do not find any justification for the learned Tribunal to resort to assessment of income of the deceased notionally. Findings of the learned Tribunal in this respect cannot be sustained and are hereby set aside. Instead, income of the deceased is taken to be Rs. 7050/- P.M. To it 50 % has to be added towards future prospects. This takes income of the deceased to Rs.10,575/- P.M. After deducting 1/3rd from the assessed income of the deceased, net loss of dependency suffered by the applicants-appellants comes to Rs. 7050/- P.M. or say Rs. 84,600/- per annum. Age of the deceased being 35 years, as recorded in post mortem report, Exhibit P5 and it having not been disputed by respondent No.3, a multiplier of 16 has to be applied. To resultant figure, an amount of Rs. one lac has to be added towards loss of love and affection, Rs. one lac towards loss of consortium, Rs. 25,000/- as expenditure on last rites of deceased. Rs. 5,000/- on the loss of estate. It has also come on record that after the occurrence, deceased was taken to hospital, and an amount of Rs. 10,000/- was spent on her treatment. There is no reason in sight to deny this amount to the applicants-appellants, so calculated compensation payable to applicants-appellants comes to Rs.15,93,600/- which shall be inclusive of the compensation awarded by the learned Tribunal. Applicants-appellants are also held entitled to costs of this appeal which are assessed as Rs. 2200/-.

However, other terms of the impugned award shall remain unchanged.

Appeal is disposed of accordingly.

February 4,2015 (MAHAVIR S.CHAUHAN)
nk JUDGE