THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3483 of 2013(O&M)
Date of decision : 26.02.2015

Cholamandalam MS General Insurance Co. Ltd.

......Appellant

Versus

Lakhmi Chand and others

...Respondents

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 ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rajneesh Malhotra, Advocate with
Ms. Monika Jangra, Advocate
for the appellants

Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for respondents No. 1 to 4

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ANITA CHAUDHRY, J.

The appellant seeks reduction of the compensation of ₹ 17,62,200/- awarded to the claimants by the Motor Accident Claims Tribunal, Kurukshetra vide award dated 13.02.2013. In an accident which occurred on 02.07.2012, Lakhmi Chand lost his wife. The remaining claimants were the minor children.

The contention raised by the claimants was that the deceased was earning ₹ 10,000/- per month as she knew knitting and stitching. The Tribunal noted that there was no satisfactory evidence. The claimants plea in the alternate was that she was a home maker and her income could be assessed more than the skilled persons. Relying upon judgment reported as ***Royal Sundaram Alliance Insurance Co. Ltd. vs. Manmeet Singh and others, 2012 ACJ 721,*** a submission was made that her income could be taken as that of a skilled worker and sought an addition for future prospects as in the case of ***Royal Sundaram's case(supra).***

The Tribunal took the notional income to be ₹ 7,000/- per month and added 30% raising it to be ₹ 9,100/-. The annual contribution was taken as ₹ 1,09,200/-. Applying the multiplier of 16 the compensation was calculated at ₹ 17,47,200/-. A sum of ₹ 15,000/- was added for funeral expenses and transportation.

The appellant has made three fold submissions, firstly that the notional income assessed by the Tribunal was on the higher side, there could have been no addition and income tax should have been deducted. It was urged that there was no evidence regarding the life style of the family and the role which the mother was playing and there was no criteria to fix the notional income. It was urged that no addition should have been made for future prospects as that matter was under consideration with the Hon'ble Apex Court for self earning member but here the deceased was not even earning. It was urged that if it is taken as income, then there should have been deduction towards personal living expenses to balance the rights of the parties.

The submission on the other hand was that services rendered by the house wife can not be counted and there are no fixed hours of work and she is always in attendance to the family and her services are invaluable and the Tribunal had considered the judgments rendered by Delhi High Court and the award was appropriate. Reliance was placed upon ***Oriental Insurance Co. Ltd. vs. Parvin Devi, 2013(8) RCR(Civil) 200*** and ***New India Assurance Co. Ltd. vs. Gopal and others, 2012(3) RCR(Civil) 818.***

True, it is not possible to quantify any amount in lieu of services which are rendered by the wife or the mother to a family and certain amount of guess work has to be done. A mother does not work by the clock. She is in constant attendance to the family unless she is employed or has to attend to her office duties. It would be indeed unfair and unjust to adopt the yardstick of minimum labour wages simply because there is no method of assessing the contribution of a housewife to a household but at the same time the claimants must lead evidence to prove the services rendered by the housewife/mother. In the absence of any evidence the value of services can not be determined properly.

In the case in hand, there is no evidence as to whether the deceased was educated, a non-matriculate or matriculate or a graduate or above.

In the absence of any evidence even if we see the wages of a skilled worker in 2012, those were not ₹ 7,000/-. In ***Lata Wadhwa and others vs. State of Bihar and others, 2001 AIR (SC) 3218,*** ₹ 3000/- were taken as notional income for a housewife, after 14 years we can take ₹ 5000/- p.m. as notional income. In my view the notional income of the deceased could not be treated more than ₹ 5,000/-.

If we are taking the notional income for a house wife then no amount should be added for future prospects. The Hon'ble Supreme Court in ***Arun Kumar Aggarwal and another vs. National Insurance Company and others, 2010(3) PLR (SC) 418*** did not award anything for future prospects where a housewife had died. Similarly in ***Krishan Gopal vs. Lala, 2013(4) RCR (Civil) 276*** a child had died and two Judges Bench of the Hon'ble Supreme Court while awarding compensation did not take anything for future prospects. In my opinion when the claimants are unable to prove that the deceased was earning and notional income is taken into account for calculating the loss, then benefit for future prospects should not be added. It is one thing to count income for future prospects when the income is proven but where the income is notional as in the case of a student or a housewife, it may not be appropriate to award further benefit of notional future prospects, particularly when in the cases of notional income the Courts are not making any deduction for personal expenses. Taking the notional income to be ₹ 5,000/-, the annual contribution would be ₹ 60,000/-. Applying the multiplier of 16 the compensation would come to ₹ 9,60,000/-. To this ₹ 1,00,000/- should be added for loss of consortium, ₹ 1,00,000/- for loss of love and affection, ₹ 15,000/- more for funeral expenses raising the total to ₹ 11,75,000/-.

The appeal is partly allowed. The award is modified and it is held that claimants were entitled to a sum of ₹ 11,75,000/-. This amount shall be paid at the same rate of interest as awarded by the Tribunal and shall be shared in the same ratio as allowed by the Tribunal. The award is modified.

26.02.2015 **(ANITA CHAUDHRY)**
reena **JUDGE**