IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-589-2014
Judgment reserved on 4.9.2015
Date of pronouncement: 30.9.2015

Bhateri

...Appellant

Versus

Surender and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.YP Singh, Advocate for the appellant

Mr.Pardeep Goyal, Advocate
for respondent No.3- Insurance Co.

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SNEH PRASHAR, J.

The present appeal is for enhancement of the compensation of Rs.2,55,200/- awarded in favour of the claimant-appellant vide award dated 31.8.2013 passed by learned Motor Accident Claims Tribunal, Bhiwani (for short 'the Tribunal'), on account of the death of Surender @ Sunder, son of the appellant, in a motor vehicular accident.

The submissions made by learned counsel for the parties have been heard and record perused.

Learned counsel for the appellant contends that the deceased was a proficient driver and was getting salary of

Rs.6,000/- per month plus Rs.100/- per month as daily allowance. To prove the salary of the deceased, the appellant examined Subhash, employer of the deceased as PW3, who supported the version of the appellant-claimant by way of his deposition made in the shape of affidavit. However, the learned Tribunal wrongly assessed his income at Rs.5600/- per month. The deceased was unmarried person of 25 years of age. The learned Tribunal by considering the age of the appellant-claimant, who is mother of the deceased wrongly applied the multiplier of 7, whereas in view of the law laid down by the Hon'ble Supreme Court in **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and others (2015) 6 SCC 347**, wherein while calculating the compensation, the multiplier was applied according to the age of the deceased, the multiplier should have been 18. Learned counsel also asserted that no amount has been awarded towards loss of love and affection and future prospects.

On the other hand, learned counsel appearing for respondent No.3- Insurance Company resisted the prayer of the appellant. Submitting that just and adequate compensation has been awarded to the appellant, learned counsel prayed that the present appeal be dismissed.

It is an admitted fact that the death of Surender @

Sunder occurred in a motor vehicular accident caused by respondent No.1-driver of the offending vehicle. The deceased was aged 25 years and was a bachelor at the time of his death. As regard income of the deceased, no substantive and reliable evidence could be produced by the appellant to support her claim that the deceased was earning Rs.9,000/- per month (Rs.6000/- as salary plus Rs.100/- per day as daily allowance). No appointment letter or any other document showing the attendance of the deceased or payment of salary to him, could be produced by PW3 Subhash. As such, the amount of Rs.5600/- per month assessed as monthly income of the deceased by learned Tribunal, which was the amount a daily wager could earn in the year 2006, is adequate and justified.

In **Munna Lal Jain case (supra)** Hon'ble Supreme Court has held as under:-

> The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as

> that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken.

In the case in hand, as per PMR of the deceased, he was 25 years of age at the time of his death. Therefore, the multiplier of 18 should have been applied. Ordered accordingly.

In **<u>Rajesh and others vs. Rajbir Singh and others 2013 (9) SCC 54</u>**, in para 11, the Hon'ble Supreme Court has observed as under:

> "11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self employed and person on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self employed or persons of fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

In view of the above, the claimant-appellant is held entitled to an increase in the income of the deceased by 50% towards future prospects. The deduction towards personal expenses of the deceased to the extent of 50% has already been ordered by learned Tribunal, which is appropriate considering the fact that he was a bachelor and the claimant is the mother.

As no amount has been awarded towards loss of love and affection to the mother-appellant, a sum of Rs.25,000/- is allowed in this regard. The sum of Rs.20,000/- towards funeral expenses awarded by the Tribunal is also just and adequate.

Accordingly, the loss of dependency comes to Rs.9,07,200/-(5600 (monthly income) +50% (future prospects) =8400- 1/2 (deduction towards personal expenses)=4200 x 12= 50400 (annual income) x 18 (multiplier)= 9,07,200/-.

The overall compensation comes to Rs.9,52,200/- (9,07,200 towards loss of dependency) + 45,000 towards conventional heads. Thus, there is enhancement of Rs. 6,97,000/- (9,52,200- 2,55,200 already awarded by learned Tribunal). If the enhanced amount is not deposited by the Insurance Company within 45 days from the date of receipt of the certified copy of this judgment, the same shall carry interest @ 7.5 % per annum from the date of filing of the appeal till its realisation.

In view of the above, the present appeal is partly allowed and the award is modified to the above extent.

30.9.2015 **(SNEH PRASHAR)**
gsv **JUDGE**