IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5762-2002 (O&M)
Date of decision: 6.4.2016

Raj Rani and another

...Appellants

Versus

Rosy and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Rajnish K.Gupta, Advocate for the appellants

Respondent No.1 ex-parte

Mr.RC Gupta, Advocate for respondent no.2

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SNEH PRASHAR, J.

This appeal is for enhancement of the compensation awarded to the claimants-appellants by learned Motor Accidents Claims Tribunal, Kaithal (in short 'the Tribunal'), vide award dated 1.10.2002 on account of death of Amit Gupta, son of appellant No.1 and father of appellant No.2, in a road side accident.

The submissions made by Mr.Rajneesh K. Gupta, Advocate representing the appellants and Mr.RC Gupta, Advocate for respondent- Insurance Company have been heard and record perused.

Learned counsel for the appellants argued that the deceased was running a sanitary and marble shop at Kaithal and used to earn Rs.10,000/ per month. The claimants-appellants examined PW4 Parmod Kumar Gupta, owner of the shop, who stated that the deceased was in possession of his shop on monthly rent of Rs.2600/-. Ignoring the said evidence, learned Tribunal assessed the income of the deceased as Rs.15,000/- per annum, which is extremely less. The amount awarded under the conventional heads is also inadequate.

Section 163A of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') is a legislative innovation providing for strict liability that relieves the claimant of proving the normal principle of fault / wrongful act that is normative basis for claiming compensation from the tortfeaser. The legislature intended to provide a quicker means of securing compensation on a structured formula and made this provision applicable only to relatively poor class of persons and therefore, it sets a maximum limit of income, multiplier and deduction on which the benefit can be extended. This section contains certain inherent limitation on its applicability.

In the present case, the claim petition was filed under Section 163A of the Act of 1988. There is no dispute that the deceased died due to the injuries sustained in an accident arising out of use of the car bearing registration No.HR-32-0182 (hereinafter referred to as 'the Car'). He was 30 years aged. The claimants examined PW4 Parmod Kumar Gupta to prove that the deceased was in occupation of a shop as a tenant on payment of Rs.2600/- as rent. But no rent deed or receipt of payment of rent was produced. PW4 Parmod Kumar could also not produce any document to prove his ownership qua any shop. There is no substantive evidence with regard to income of the deceased a well except the oral evidence led by the claimants. However, it is also a fact worth consideration that the deceased was a young man aged 30 years and had a mother and a minor child dependent on him. Even if he was a daily wager, the income of Rs.15,000/- per annum assessed by learned Tribunal is on quite less. Therefore, keeping in view the age of the deceased and the minimum wages prevalent at the relevant time, the income of the deceased is assessed as Rs.36000/- per annum. As there can not be deviation from the limitation set down under Section 163-A of the Act of 1988 on some imaginative claims, there can be no addition to the income computing the future prospects.

The deduction of 1/3rd towards personal and living expenses of the deceased and the multiplier of 17 applied by learned Tribunal are as per the Second Schedule of the Act of 1988.

Accordingly, the total compensation comes to as under:-

Description	***Detail of calculation***	***Amount (Rs.)***
Annual income of the deceased	Rs.3000x12	Rs.36000/-

Description	*Detail of calculation*	*Amount (Rs.)*
Future prospects	Nil	
Deduction on account of personal living of the deceased	@ 1/3rd of the income Rs.36,000-12000	Rs.24000/-
Amount after applying multiplier of 17	Rs.24,000x 17	Rs.4,08,000/-
Conventional heads (Funeral expenses and loss of estate)		Rs.4500/-
Total compensation		Rs.4,12,500/-

The enhanced amount of Rs.2,37,500/- (4,12,500 – 1,75,000/-) shall be paid to the appellants within two months from the date of the receipt of the certified copy of this judgment, failing which, it shall carry interest at the rate of 7.5% per annum from the date of the filing of the appeal till its reaslisation.

In the above premises, the present appeal is partly allowed and the impugned award is modified as noticed above.

6.4.2016 **(SNEH PRASHAR)**
gsv **JUDGE**