Paramjit Kaur Saini
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In the High Court of Punjab and Haryana at Chandigarh

FAO No. 1753 of 1999
Date of Decision: 23.12.2016

Mohendra and others

---Appellants

versus

Baljit Singh and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

Present: Mr. Govind Chauhan, Advocate
for Mr. Ashish Aggarwal, Advocate
for the appellants

Mr. R.C.Kapoor, Advocate
for the insurance company

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Rekha Mittal, J.

The claimants are in appeal seeking enhancement of compensation in regard to death of Rohtash in a motor vehicular accident that took place on 20.6.1997.

The Motor Accidents Claims Tribunal, Karnal (in short "the Tribunal") assessed income of the deceased at Rs. 1500/- per month, deducted 1/3rd for personal expenses, applied a multiplier of 16 to compute of loss of dependency at Rs. 1,92,000/-. In addition, an amount of Rs. 10,000/- for loss of consortium to the widow, Rs. 5000/- for transportation, funeral and last rites has been awarded making total compensation to Rs. 2,07,000/-.

Counsel for the appellant has submitted that as the deceased was working at a brick kiln and had been preparing 2500 to 3000 bricks per day @ Rs. 100/- per 1000 bricks, monthly income of the deceased should be Rs. 6,000/- to 7000/- in view of testimony of Jai Singh PW5. The Tribunal has not allowed benefit of increase in income for future prospects, the deduction should be 1/4th and the multiplier to be 18 in view of number of dependents upon the deceased and his age respectively. Compensation awarded under conventional heads needs enhancement.

Counsel for the insurance company has supported the findings qua assessment of income of the deceased on the premise that Jai Singh PW5 did not produce any documentary evidence either with regard to rate fixed by the brick kiln or the bricks being prepared by the deceased per day.

It is further submitted that the Tribunal has rightly assessed income of the deceased on the basis of minimum wage available to an unskilled worker at the relevant time. However, he has not disputed that admissible multiplier would be 18 and deduction to the extent of $1/4^{th}$. It has further been submitted that reasonable amount may be awarded under conventional heads but by taking into consideration that the occurrence pertains to the year 1997.

I have heard counsel for the parties, perused the paper book particularly the award passed by the Tribunal.

The Tribunal in para 32 of the award has discussed that record of the brick kiln could be the best evidence to prove income of the deceased but the same has not been got proved. Jai singh PW5 has admitted that he was no more working as munim/clerk on the brick kiln and even could not produce any document which would show that he ever worked as munin/clerk at the brick kiln of Ram Kumar Gupta. In the circumstances, no fault can be found in the findings of the Tribunal for its refusal to rely upon testimony of Jai Singh PW-5 with regard to the deceased working on a brick kiln much less earning Rs. 6000-7000/- per month. Taking into consideration the minimum wage for an unskilled labour fixed by the State of Haryana at the relevant time, income of the deceased is assessed at Rs. 1600/- per month. The claimants shall be entitled to benefit of increase in income for future prospects to the extent of 50%. The said benefit cannot be denied merely because the matter with regard to future prospects is pending before a Larger Bench in view of reference made in National Insurance Company Limited vs. Pushpa and others in a petition for Special Leave to Appeal (Civil)-8050 of 2014 till the judgment in ***Rajesh and others vs. Rajbir Singh and others (2013)3 RCR (Civil) 170*** is set aside of varied. The admissible deduction would be 1/4th and the multiplier to be 18. In this manner, loss of dependency comes to Rs. 2400 x 12x 18 = Rs. 5,18,400 - 1,29,600/-= **Rs 3,88,800/-**.

Under conventional heads, an amount of **Rs. 1,00,000/-** for loss of consortium to the widow. **Rs. 15000/-** each for expenses on funeral and loss of estate and **Rs. 1,00,000/-** for loss of love and affection to the children and mother of the deceased is awarded. The total compensation is **Rs. 6,18,800** and the additional amount is **Rs. 4,11,800/-** payable with interest at the rate of 7.5% per annum from the date of petition till realization to be shared by widow and children of the deceased in equal share.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

23.12.2016
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No