In the High Court of Punjab and Haryana at Chandigarh

FAO No. 4326 of 2001
Date of Decision: 8.8.2016

Ram Chander and another

---Appellants

versus

Rajbir and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sidharath Grover, Advocate
for Mr. S.S.Narula, Advocate
for the appellants
Mr. Sanjiv Pabbi, Advocate
for respondent No. 3

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Rekha Mittal, J.

The claimants are in appeal seeking enhancement of compensation in regard to death of Surender in a motor vehicular accident that occurred on 2.7.1999 but the injured passed away on 24.7.1999.

The Tribunal has awarded lump sum compensation of Rs. 1,00,000/- payable with interest at the rate of 9% per annum from the date of petition till realization.

Counsel for the appellants has submitted that as the deceased was 22 years old and a student of 10+1, compensation is liable to be awarded by adopting a multiplier method after assessing income of the deceased and extending benefit of future prospects to the extent of 50% in the light of judgment ***Rajesh and others vs. Rajbir Singh and others (2013) 3 RCR (Civil) 170***. Further submitted that the appellants are also entitled to compensation under conventional heads.

Counsel for the insurance company, on the other hand, has submitted that as the deceased was not earning hand, no addition for future prospects is admissible. In support of his contention, he has referred to judgments of this Court ***Simar Kaur vs. Pawan Kumar and others (2014-1) V. 123 PLR 831, Cholamandalam MS General Insurance Co. Limited vs. Lakhmi Chand and others*** FAO No. 3483 of 2013 decided on 26.2.2015**,** ***Reliance General Insurance Co. Limited vs. Sunita Pandey and others 2014(5) RCR(Civil) 791.***

In ***Simar Kaur's case (supra),*** the deceased was a student of 10+1 and this Court held that since income of the deceased at Rs. 4000/- per month has been taken on assumption basis, there is no chance to apply the principle of addition of income in the name of future prospects. In

Lakhmi Chand and others' case (supra), it was held that 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 deduction for personal expenses. In ***Sunita Pandey and others' case (supra)***, no such issue with regard to grant of future prospects was raised or decided.

In ***Lakhmi Chand and others' case (supra)***, the court has refused to allow benefit of future prospects by taking into consideration that in case of notional income, deduction towards personal expenses is not being made. In the case at hand, 50% deduction has to be made for personal expenses of the deceased. The insurance company in the circumstances, cannot derive both the benefits by seeking deduction of personal expenses and denying increase in income for future prospects. In ***Simar Kaur's case (supra),*** no such ratio has been laid down that principle of addition in income for future prospects is not admissible in the case of assumption of notional income.

In the case at hand, the deceased was 22 years old and his income on the basis of wage available to an unskilled worker in the year 1999 is assessed at Rs. 1850/- per month. 50% shall be deducted for personal expenses in consonance with judgment in **Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**. Had the deceased remained alive, there would have been increase in his income more than what has been assessed by this court being notional income. Under these circumstances, I find myself unable to be persuaded with the submissions made by counsel for the insurer that benefit of future prospects is not admissible to the appellants. In this context, reference can be made to judgment of Hon'ble the Supreme Court of India **Rajan vs. Soly Sebastian 2015(4) Law Herald (SC) 299.** I would hasten to add that **Rajan's Case (supra)** pertains to assessment of compensation in injury case. The Hon'ble Supreme Court of India after assessing notional income by taking into consideration the relevant minimum wage fixed by the government has allowed 50% enhancement for future prospects to compute loss of future income.

The appellants shall be entitled to compensation for loss of dependency to the tune of Rs. 2,99,700/- i.e. Rs. 1850 x 12x 18 =3,99,600/- plus Rs.1,99,800/- (50% increase) = Rs.5,99,400/- minus 50% (2,99,700/-)

=Rs.2,99,700/-.

The mother of the deceased is awarded an amount of Rs. 50,000/- for loss of love and affection and another sum of Rs. 25000/- for expenses on funeral and last rites to the claimants. As the deceased remained alive for a period of 22 days and medical bills Ex. P-1 to P-37 were produced on record, though neither the originals nor copies thereof are available on record, on the basis of estimation, the appellants are awarded an amount of Rs. 25,000/- towards medical expenses.

The enhanced compensation of Rs.2,99,700/- (Rs. 3,99,700 - Rs.1,00,000) shall carry interest at the rate of 7.5% per annum payable from the date of filing of the petition till realization and payable exclusively to mother of the deceased.

Appeal stands disposed of.

(Rekha Mittal)
Judge

8.8.2016
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No