IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-303-2004
Date of decision: 24.2.2016

Phoola Devi and others ...Appellants

Versus

Lekh Raj and others ...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.RK Hooda, Advocate for the appellants

Mr.BS Taunque, Advocate
for respondent- Insurance Company

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SNEH PRASHAR, J.

By way of this appeal, the claimants-appellants sought enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal') vide award dated 1.9.2003 on account of death of their bread earner (Hans Raj) in a motor vehicular accident.

The submissions made by Mr.RK Hooda, Advocate for the appellants and Mr.BS Tonque, Advocate representing the Insurance Company have been heard and record perused.

It is submitted on behalf of the appellants that ignoring the fact that the deceased was cultivating six acres land, out of which two and half acres were owned by him and rest was taken on rent basis and he used to earn more than Rs. 7000/- per month, learned Tribunal assessed the income of the deceased as Rs.2400/- per month. He further submitted that there are four dependents of the deceased including appellant No.2, the major son, therefore, the deduction of $1/4^{th}$ on account of personal and living expenses of the deceased should have been applied. No amount was added to the income of the deceased computing future prospects. Also nothing was awarded for loss of love, care and guidance to the children. The amount awarded under conventional heads i.e. loss of consortium and funeral expenses is also inadequate.

Learned counsel representing the Insurance Company controverting the aforesaid arguments submitted that the deceased was 44/45 years old at the time of the accident. Learned Tribunal applied multiplier of 15 whereas it should have been 14.

It is not disputed that Hans Raj died due to the injuries sustained by him in a motor accident caused by respondent No.1 Lekh Raj, driver of the offending tractor. The liability of the Insurance Company to indemnify the insured is also not a matter in issue. Neither any jamabandi, nor any other revenue document showing that the deceased was owner or was in cultivating possession of any agricultural land was tendered in evidence by the claimants. There is also no substantive evidence to prove the occupation and income of the deceased. Therefore, learned Tribunal taking the deceased a casual labourer had rightly assessed the income of the deceased as Rs.24,00/- per month and that calls for no intervention.

The claimants -appellants are widow, three sons and a daughter among whom eldest son is major. In view of the law laid down in **Sarla Verma and others vs. DTC and another 2009 ACJ 1298**, the deduction of $1/4^{th}$ towards personal and living expenses of the deceased has to be applied and also taking into consideration the age of the deceased, multiplier of 14 should be appropriate. No doubt, the deceased was not in a permanent employment, but keeping in view the ratio of **Rajesh and others vs. Rajbir Singh and others (2013) 9 SCC 54,** since the deceased was 44/45 years old, addition of 30% to his actual income assessed by the Tribunal computing future prospects has to be made.

Further, as laid down in **Vimal Kanwar and others vs. Kishore Dan and others (2013-3) PLR 776**, the amount awarded on account of loss of consortium is enhanced to Rs.One lac, and a sum of Rs.One lac is awarded to the minor children on account of loss of love, care and guidance. The amount awarded under the funeral expenses is also enhanced to Rs.25000/-.

Accordingly, the total compensation comes to as under:-

Monthly income		**Rs.2400/-**
Income after addition on account of loss of future prospects		Rs. 720/- (30% of 2400)
Income after deduction on account of living and personal expenses of the deceased		Rs. 2340/- (3120- $1/4^{th}$)
Multiplier		14
Compensation under loss of dependency		Rs.3,93,120/- (2340x 12 x 14)

Loss of consortium		Rs.1,00,000/- (including already awarded by Tribunal)
Loss of love, care and guidance to the minor children to be paid in equal share		Rs.1,00,000/-
Expenses incurred on funeral and also loss of estate		Rs.25,000/- (including already awarded by Tribunal)
Total compensation		Rs.6,18,120/-

The enhanced amount of Rs.3,20,620/-shall be paid to the claimants-appellants by the Insurance Company within two months from the date of the receipt of the certified copy of this judgment, failing which, it shall carry interest @ 7.5 per annum from the date of filing of the appeal, till its realisation.

The present appeal is accordingly partly allowed and the impugned award is modified as noticed above.

24.2.2016 **(SNEH PRASHAR)**
gsv **JUDGE**