IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.33 of 2007
Decided on: 16.08.2016

Vivek and another

....Appellants

Versus

Varinder Kumar and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Naveen Sharma, Advocate
and Mr. Vijay Lath, Advocate
for the appellants.

Mr. Malkeet Singh, Advocate
for respondent No.1.

Mr. Gopal Mittal, Advocate
for respondent No.3.

Mr. Arun K. Bakshi, Advocate
for respondent No.4.

Mr. Anoop Kumar Yadav, Advocate
for respondent No.5.

REKHA MITTAL, J.

The claimants are in appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Jalandhar (for short 'the Tribunal') in regard to death of Mala (their mother) in a motor vehicular accident that occurred on 01.11.2004.

The learned Tribunal assessed loss of dependency @ Rs.2,100/- per month, deducted 1/3rd towards personal expenses of the deceased, adopted multiplier of 10 and computed loss of dependency to the tune of Rs.1,68,000/-. Another sum of Rs.10,000/- was awarded towards funeral expenses, making total compensation to the tune of

Rs.1,78,000/- payable with interest @ 6% per annum from the date of petition till realization. It has further been held that the insurance company is liable to pay only 50% of compensation and remaining 50% shall be paid by Varinder Kumar (driver), Tara Chand (registered owner) and Kulwinder Singh (purchaser of the vehicle in question from Tara Chand).

Counsel for the appellants has submitted that even if the deceased is taken to be a house-maker, value of her services should be assessed at a rate not less than Rs.5,000/- per month. No deduction towards personal expenses is to be allowed in such a case. In this context, reference has been made to a Division Bench judgment of this Court ***"Paramjit Singh and another vs. Dilbagh Singh @ Bagga and other"*** **2014 (4) AICJ 65**. It has further been argued that the Tribunal has wrongly applied multiplier of 10 in place of 16 as the deceased was in the age bracket of 31 to 35 years'. The Tribunal has not awarded any compensation for loss of love and affection and compensation for funeral expenses requires enhancement.

Another submission made by counsel is that as the vehicle was duly insured with United India Insurance Company Limited – respondent No.3, the Tribunal committed a gross error rather illegality by exonerating the insurance company of its liability to pay remaining 50% that has been held to be exclusively payable by the driver, registered owner and purchaser of the vehicle in question. It is prayed that the insurance company should be held liable to pay the entire amount of compensation assessed by the Tribunal as well as the enhanced compensation.

Counsel for the insurance company, on the contrary, has supported the award. It has been urged that the Tribunal has rightly relied upon judgment of this Court ***"Ram Chander vs Naresh Kumar",*** **1999(2) RCR (Civil) 420** to hold that the insurance company is liable to pay compensation only to the extent of 50%.

Counsel representing the other respondents have echoed the arguments advanced by counsel for the insurance company.

In reply, counsel for the appellants has relied upon judgment of Hon'ble the Supreme Court of India ***"Pushpa @ Leela and others vs Shakuntala and others",*** **2011(2) RCR (Civil) 616** to contend that the insurance company cannot escape its liability to pay entire compensation in order to indemnify the registered owner of the vehicle arrayed as a respondent who has been held liable to pay entire compensation. Further reference has been made to judgment of this Court ***"Gobind Ram vs Umed Singh and others",*** **2008(3) RCR (Civil) 276**.

I have heard counsel for the parties and perused the paperbook particularly the award passed by the learned Tribunal.

The occurrence in question took place on 01.11.2004, resulting in abrupt termination of life of Mala at the age of 33 years' who left behind two minor children namely Vivek and Komal. The Hon'ble Supreme Court of India valued services of a housewife @ Rs.3,000/- per month in respect of an occurrence that took place in mid 1980s in ***"Lata Wadhwa and others vs State of Bihar and others",*** **2001(4) RCR (Civil) 673** keeping in view the price index and value of services of a helper for doing domestic chores, services of the deceased in terms of money can safely be assessed @ Rs.5,000/- per month. No deduction for personal expenses is admissible in the light of Division Bench judgment ***Paramjit Singh's case (supra)***. The Tribunal has not recorded any justification to apply a multiplier of 10 as against 16 admissible in view of the landmark judgment of Hon'ble the Supreme Court of India ***"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another",*** **2009(3) R.C.R. (Civil) 77.** In view of the above, loss of dependency is assessed at ***Rs.9,60,000/-*** (Rs.5,000/- x 12 x 16). The appellants shall be entitled to an amount of ***Rs.1,50,000/-*** in equal share for loss of love and affection of their mother, ***Rs.25,000/-*** for expenses on funeral. In this manner, the total compensation payable to the appellants comes to Rs.11,35,000/-.

The findings recorded by the learned Tribunal exonerating the insurance company of its liability to pay 50% of the amount of compensation cannot be allowed to stand in view of judgment of Hon'ble the Supreme Court of India ***Pushpa @ Leela and others case (supra)***. The insurance company shall be liable to pay entire amount of compensation, held to be payable by the registered owner of the vehicle who has taken out an insurance policy in his name. The Tribunal committed a gross error by relying upon judgment ***Ram Chander's case (supra)*** without appreciating that in the said case, the registered owner was not arrayed as a party in the claim application.

The enhanced compensation is calculated at ***Rs.9,57,000/-*** (Rs.11,35,000/- – Rs.1,78,000/-) payable with interest @ 7.5% per annum from the date of petition till realization.

The compensation awarded to the appellants shall be deposited in the shape of FDR in a nationalized bank for a period of three years or till they attain the age of majority whichever is later. The insurance company shall be liable to pay entire amount of compensation assessed by the Tribunal as well as enhanced compensation awarded by this Court.

The appeal stands disposed of in the aforesaid terms.

(REKHA MITTAL)
JUDGE

16.08.2016
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Whether speaking/reasoned Yes/No

Whether reportable: Yes/No