IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3238-2010 (O&M)
Date of decision: 29.4.2016

Sardara Singh and another

...Appellants

Versus

Sanjeev Kumar and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.KK Chaudhary, Advocate for the appellants

Mr.RN Singhal, Advocate for respondent no.3

Mr.DP Gupta, Advocate for respondent No.5

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SNEH PRASHAR, J.

Application for condonation of delay

The application under Section 5 of the Limitation Act has been filed for condonation of delay of 73 days in filing the appeal.

In view of the submissions made by learned counsel for the parties and the averments made in the application, the delay is condoned and the application stands disposed of accordingly.

FAO-3238-2010

Appellants-Sardara Singh and his wife filed this appeal seeking enhancement of compensation awarded to them vide award dated 21.7.2009 passed by Motor Accident Claims Tribunal, Karnal (for short, "the Tribunal").

A petition invoking the provisions of Section 163-A of the

Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was filed by appellants-Sardara Singh and his wife claiming compensation on account of death of their son Devender in a motor accident that took place between a truck bearing registration No.HR-45-6714 and a tractor bearing registration No.HR-07J-1984. After trial learned Tribunal partly allowed the petition and awarded a sum of Rs.1,37,980/- as compensation to the claimants.

Feeling dissatisfied with the award, the appellants preferred the instant appeal.

The submissions made by Mr. KK Chaudhary, Advocate representing the appellants, Mr.RN Singhal, Advocate for respondent No.3 and Mr.DP Gupta, learned counsel for respondent No.5 have been heard and record perused.

The only argument raised by learned counsel for the appellants is that the multiplier to the amount of dependency worked out by the tribunal should have been chosen according to the age of the deceased and not as per age of the parents for calculating compensation.

Learned counsel for respondents No.3 and 5 controverted the above argument and submitted as laid down in **New India Assurance Company Ltd. vs. Smt. Shanti Pathak and others 2007(3) RCR (Civil) 593,** the multiplier has to be applied considering the age of the mother of the deceased.

Undisputedly, Devender, son of the appellants died due to the injuries sustained by him a road side accident that took place on 13.10.2006. He was a bachelor at the time of accident. The income of the deceased as Rs.3200/- per month and the deduction of 1/3rd towards personal and living expenses of the deceased taken by learned Tribunal as per Second Schedule of the Act of 1988 call for no intervention.

Regarding applying of suitable multiplier, it was held by Full Bench of Hon'ble Supreme Court in **Reshma Kumari and others vs. Madan Mohan and another 2013(2) RCR (Civil) 660** that the multiplier is to be applied with reference to the age of the deceased. A similar view has been taken by Hon'ble Supreme Court in **Amrit Bhanu Shali and others vs. National Insurance Co. Ltd. and others 2012 ACJ 2002**. In **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and others (2015) 6 SCC 347** following **Reshma Kumari's case (supra)** it has been held as under:-

> "The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken."

In the present case, the deceased was 28 years of age when he died during the accident. The Motor Vehicles Act, being a beneficial legislation, this Court relies on Munna Lal Jain's case (supra), which is subsequent to the case law cited by learned counsel for the respondent-Insurance Company i.e. in Smt. Shanti Pathak's case (supra). Thus, applying the multiplier of 18, the amount under the loss of dependency comes to Rs.4,60,800/- (3200 -1/3rd x 12 x 18).

Perusal of the award shows that a sum of Rs.10,000/- on account of funeral & transportation expenses etc. was awarded, which needs no modification.

Accordingly, the enhanced amount of Rs.3,22,820/- (4,70,800-1,37,980) shall be paid to the appellants by both the insurance companies in equal shares within two months from the date of 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 appeal, till its realization.

In view of the above, the present appeal is partly allowed and the impugned award is modified to the above extent.

29.4.2016 **(SNEH PRASHAR)**
gsv **JUDGE**