IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.739 of 2010
Date of Decision.08.08.2016

Surjit Kaur ....Appellant

Vs.

Rajwinder Singh and others ....Respondents

Present: Mr. Ashish Grover, Advocate for the appellant.

Ms. Monika Jangra, Advocate and Ms. Vandana Malhotra, Advocate for respondent No.2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appeal is for enhancement of compensation for death of a male aged 24 years who died in a motor accident on 15.04.2005. When deceased-Shinder Singh was returning from his work place to his village, the motor cycle he was riding, was hit by a maruti car bearing No.PB-04H-0404 driven rashly and negligently by respondent No.1, resulting into serious injuries. He died on the way to the hospital. The claimants were widow and mother before the Tribunal but the present appeal is preferred only by the mother. The deceased was stated to be earning ₹8000/- per month by running a scooter workshop. In the absence of any documentary evidence, the Tribunal, while assessing the compensation, took the income of the deceased at ₹3000/- per month, made a deduction of 1/3rd and applied a multiplier of 15 to assess the loss of dependency at ₹3,60,000/-. It also provided ₹3000/- as funeral expenses and assessed a total compensation of ₹3,63,000/-.

Mr. Ashish Grover, learned counsel for the appellant submits

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that the Tribunal has assessed the income of the deceased grossly low at ₹3000/- per month and applied a wrong multiplier of 15 depending on the age of one of the the claimants, instead the multiplier should have been applied as per the age of the deceased. It did not provide for prospect of future increase, much less, notional heads of claim viz; loss of consortium, loss of love and affection and loss to estate. In fact, funeral charges are also assessed at a very low rate i.e. ₹3000/- only, thus, urges this Court for enhancement of compensation by modifying the award passed by the Tribunal.

On the contrary, Ms. Monika Jangra and Ms. Vandana Malhotra, learned counsel appearing for respondent No.2 submits that the Tribunal has assessed all the heads of claim appropriately and there is no scope for enhancement, thus, urges this Court for confirming the award by dismissing the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is a definite scope of enhancement as the Tribunal has not met out the parameters laid down by the Hon'ble Supreme Court in ***Sarla Verma vs. DTC (2009) 6 SCC 121*** and still later in ***Rajesh Vs. Rajbir Singh (2013) 9 SCC 54***. I will retain the income as assessed by the Tribunal at ₹3000/-, make a deduction of 1/3rd and apply the multiplier of 18 suitable to the age of the deceased and not on the basis of age of one of the dependents, for, it is a settled law that selection of multiplier should be on the basis of the age of the deceased and not of the age of one of the dependents, as laid down by the Hon'ble Surpeme Court in ***Amrit Bhanu Shali and others Vs. National Insurance Company Limited and others (2012) 11 SCC 738.*** The relevant portion of para 15 of the said judgment is

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reproduced as under:-

> *"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of compensation."*

The Tribunal also erred in not making a prospect of future increase as per the ratio decidendi culled out in the judgment rendered by the Hon'ble Supreme Court in ***Rajesh Vs. Rajbir Singh*** (supra) that in cases where the deceased was self employed or person with fixed wages, the actual income of the deceased must be enhanced for purpose of computation *viz*; (i) by 50% where his age was below 40 years; (ii) by 30% where he belonged to age group of 40 to 50 years and (iii) by 15% where he was between the age group of 50 to 60 years.

In the present case, the age of the deceased was 24 years and he was self employed and therefore, I will provide 50% increase in the actual salary as prospect of future increase. In addition to that, I will provide ₹1,00,000/- as loss of love and affection to the mother, ₹25,000/- towards loss of estate and ₹25,000/- towards funeral expenses, as per the judgments of the Supreme Court referred to above.

Now the only head of claim that remains unaddressed, is loss of consortium to the widow. Admittedly, the widow is not an appellant before this Court and she has been arrayed as a *pro forma* respondent in the array of parties. In such a situation, the question arises whether she will be entitled to enhanced compensation, particularly when the plea before the Tribunal was that she has remarried though the said plea of remarriage

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taken before the Tribunal was disbelieved. Even for the arguments sake, if it is admitted that she has remarried even then it will not make any difference, for, remarriage is no more a disqualification for a Hindu Widow to inherent property of husband in view of omission of Section 24 of the Hindu Succession Act by an Amendment Act 39 of 2005 w.e.f. 09.09.2005 . This court in ***Bihari Lal Sharma and others Vs. State of Punjab and others 1993(1) ACC 110*** held that the status of the wife of the deceased was to be seen at the time of award and the subsequent change in the matrimonial status is not to be taken into account. In any case, marriages in such cases are not by choice/design, but are social compulsions. More so, the remarriage is not the substitute for the loss of an earlier husband. Section 14 of the Hindu Succession Act, 1956 considers the widow as absolute owner and under Section 8 of Schedule I, the widow is considered as first class legal heir.

Even otherwise, Section 166 of the Motor Vehicles Act, 1988 talks about persons who can make application for compensation. Sub-clause (c) Section 166 states that where the death has resulted from the accident, an application may be made by all or any of the legal representatives of the deceased, as the case may be. Proviso to Section 166 (c) further reads as under:-

> *"Provided that where all the Legal Representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application."*

Thus, reading of the aforementioned provisions of Section 166 of the Motor Vehicles Act, 1988 clears the intention of the Legislature that

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Motor Vehicles Act is a welfare legislation and that is why it provides that the application can be made by one of the legal representatives for the benefit of all the legal representatives of the deceased and *who have not so joined, shall be impleaded as respondents to the application.*

Even otherwise, legal representative is termed wider than legal heir. The Hon'ble Supreme Court in ***Custodian of Branches of BANCO National Ultramarino Vs. Nalini Bai Naique AIR 1989 SC 1589*** held that "legal representative" as defined in Section 2(11) of the CPC is inclusive in character and its scope is wide and is not confined to legal heirs only. In ***Gujarat State Road Transport Corporation Ahmedabad Vs. Ramanbhai Prabhatbhai and another AIR 1987 SC 1690,*** the Hon'ble Apex Court held a legal representative is one who suffers on account of death of a person due to a motor vehicle accident.

The point of locus standi of widow after remarriage to maintain appeal against award of Tribunal has been dealt with in a judgment rendered by Madras High Court in ***Selvi Vs. K. Alagarsamy 2010(2) TN MAC 328*** where the Madras High Court while referring to aforementioned judgments, answered in affirmative.

In view of the provisions of Motor Vehicles Act, 1988 and Hindu Succession Act, 1956 as discussed above, the widow, even if remarried, shall be entitled to the compensation both as a legal representative and as well as legal heir of the deceased-husband. Besides this, I will also invoke my power as court of appeal under Order 41 Rule 33 CPC to provide compensation in favour of the widow and under the head of loss of consortium, I will provide additional sum of ₹1 lac.

So in the ultimate dispensation, I will rework the compensation

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as under:-

FATAL ACCIDENT			
Age	24 years		
Occupation	Running scooter workshop		
Claimants	Widow and mother		
	Heads of claim	**Tribunal**	**High Court**
Sl. No.		Amount (₹)	Amount (₹)
1	Income	3000	3000
2	Add, % of increase 50%		1500
3	Less, Deduction 1/3rd	2000	3000
4	Multiplicand (annualized by multiplying 12)	24000	36000
5	Multiplier	15	18
6	Loss of dependence	3,60,000	6,48,000
7	Medical Expenses & Transportation	--	--
8	Loss of Consortium	--	1,00,000
9	Loss of love and affection	--	1,00,000
10	Loss to estate	--	25000
11	Funeral expenses	3000	25000
	Total	**3,63,000**	**8,98,000**

The total compensation payable shall be ₹8,98,000/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @9% from the date of petition till the date of payment. The enhanced amount of ₹5,35,000/- (₹8,98,000-3,63,000) shall be distributed equally between the dependents/claimants i.e. widow and the mother. The liability shall be on respondent Nos.1 and 2 jointly and severally as assessed by the Tribunal.

The award passed by the Tribunal is modified and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

August 08, 2016
Pankaj* Whether speaking/reasoned Yes

Whether reportable Yes

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