IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6253-2011 (O&M)
Date of decision: 18.3.2016

Suresh Bhandri and another

...Appellants

Versus

Harjit Singh and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.SS Chatrath, Advocate for the appellants

Mr.RC Kapoor, Advocate for respondent No.6.

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SNEH PRASHAR, J.

The present appeal has been filed by the claimants-appellants seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal') vide award dated 15.3.2010 on account of death of Ashok Bhandari, father of the appellants, in a motor vehicular accident.

The submissions made by learned counsel for the parties have been heard.

Learned counsel for the appellants raised two fold arguments i.e. (i) the multiplier of 5 applied by learned Tribunal is on the lower side and (ii) the amount awarded under conventional heads is inadequate.

On the other hand, learned counsel for the respondent-Insurance Company submitted that the claimants -appellants being the major son and daughter of deceased Ashok Bhandari, are not entitled for compensation. The deceased was to retire after one year of the accident and his spouse is not alive, therefore, there is no loss to the claimants-appellants. He relied upon **Smt.Manjuri Bera vs. The Oriental Insurance Company Ltd. And another 2007(2) RCR (Civil) 675.**

There is no denial to the fact that the death of Ashok Bhandari occurred due to a motor vehicular accident caused by respondent No.1-driver of the offending vehicle. The petition claiming compensation under Section 166 of the Act of 1988 was filed by the son and daughter of the deceased. Admittedly, the claimants are class-I legal heirs/ legal representatives of the deceased. They would have naturally succeeded to the movable and immovable property left by the deceased. Otherwise also in Indian society, even after the daughters are married, as per tradition and culture, the parents carry on to give them gifts adequately on festivals and other ceremonial occasions.

As postulated under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988'), a petition for claiming compensation arising out of an accident is maintainable by the person, who had sustained injuries or in case of death by the legal representatives of the deceased and in case of damage to the property by the owner of the property. As such, the claimants being the legal representatives were entitled to commence an action for damages against the tortfeasors.

The facts of **Manjuri Bera's case (supra)** are distinguishable. In the present case, claim petition was filed under

Section 166 of the Act of 1988, whereas in **Smt.Manjuri Bera's case (supra)**, the claim petition was filed by married daughter of the victim under Section 140(2) of the Act of 1988. It is important to mention here that even in **Manjuri Bera's case (supra)**, the Hon'ble Supreme Court has held that even a married daughter is a legal representative and is certainly entitled to claim compensation. In the case in hand, son of the deceased is also a claimant alongwith married daughter.

In **Gujarat Sate Road Transport Corporation vs. Ramanbhai Prabhatbhai, 1987 ACJ 561**, the Hon'ble Apex Court held that it would be appropriated to assign to the expression 'legal representative' the same meaning as had been given to the expression 'representative' for the purpose of the Fatal Accidents Act, 1855 and that would effectively carry out the purpose of social justice underlying Chapter VIII of the Act to which the Fatal Accidents Act, 1855 was the nearest approximation. As per provisions of Section 1A of the Fatal Accidents Act, 1855 every such action/ suit shall be for the benefit of the wife, husband, parent and child.

In view of the aforesaid discussion, the contention of learned counsel for the Insurance Company that the claimants-appellants, who are the son and daughter are not entitled to compensation is baseless and is discarded.

The deceased was employed with Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India at Chandigarh and was drawing salary of Rs.23,748/- per month. After deducting income tax, learned Tribunal assessed his income as Rs.22,447/- per month, which calls for no intervention. It has come in evidence that the date of birth of the deceased was 16.1.1946. The accident occurred on 7.1.2005 and thus, on that date the deceased was 59 years aged. Indeed as argued by learned counsel for the respondent- Insurance Company that after attaining the age of superannuation, the deceased would have been entitled to pension, which would be not more than 50% of the salary being drawn by him and therefore, it would not be appropriate to apply multiplier of 9 applicable at the age of 59-60 to the total salary of the deceased.

Accordingly, the compensation under the loss of dependency comes to as under:-

Monthly income in Rupees)	**Actual age of the deceased**	**Notional age (Actual age of the deceased+ the number of years of full last drawn salary as per Compassionate Rules)**	**Increase in future Income as per *Sarla Verma***	**Annual dependency**	***Multiplier as per Sarla Verma (to be broken into 2 parts if multiplier spills over the age of 58 yrs. Before + after superannuation)***	**Compensation for full Salary period i.e. upto 58 yrs. (rounded off)**	**Compensation for Pension Period i.e. after 58 years (rounded off)**	**Total compensation : (column 8+ column 9**
22447	**59**	**59+1=60**	Nil	**2/3rd x 12**	**9 (1+8)**	**1,79,576/-**	**7,18,304/-**	**8,97,880/-**

In addition to the above, Rs.1,00,000/- allowed to both the appellants in equal share on account of loss of love and affection and the amount awarded on account of funeral expenses is enhanced to Rs.25,000/-.

Accordingly, the enhanced amount of Rs.1,22,501/- (10,22,880- 9,00,379 already awarded) shall be paid to the appellants within two months from the date of 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.

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

18.3.2016 **(SNEH PRASHAR)**
gsv **JUDGE**