220

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-2442-2012 (O&M)
Date of decision : 25.07.2016.

Smt. Roshni Devi and others ..... Appellants

VERSUS

Sandeep and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Yogesh Chaudhary, Advocate for the appellants.

Mr. M.B. Jain, Advocate for respondent No.3.

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RAJ MOHAN SINGH, J.(Oral)

1. The appellants-claimants are in appeal against the award dated 19.10.2011 alleging grant of pulpable low compensation to them on account of death of Dharampal in a vehicular accident.

2. The accident took place on 14.12.2009. Deceased-Dharampal was pillion rider on the motor-cycle of Satish Kumar. When the motor-cycle was going with moderate speed, the offending truck came from the front side in a rash and negligent manner and struck against the motor-cycle by coming on the wrong side. Dharampal received multiple injuries on his person including head injury. He was removed to Civil Hospital, Kaithal and thereafter referred to P.G.I, Chandigarh, where he succumbed to injury on 16.12.2009. The driver of the motor-cycle, namely, Satish Kumar also died on account of injury on 16.12.2009. Driver of the motor-cycle also died on account of injury sustained by him on the spot. An FIR No.280 dated 14.12.2009 was registered against the driver of the offending vehicle. The

offending vehicle was owned by respondent No.2 and was insured with respondent No.3.

3. Factum of accident was admitted by the respondents. The Tribunal came to conclusion under issue No.1 that the accident took place due to rash and negligent driving of respondent No.1. The deceased was 46 years of age and was involved in occupation of Kariyana shop besides doing work of engine mechanic. The Tribunal assessed the monthly income of the deceased as ₹ 5,000/- per month. Though, the claimants have claimed an amount of ₹ 40,000/- per month towards income of the deceased but except producing bahi and oral evidence in the form of Parmod Kumar as PW3 and appellant No.1 as PW-1, no other evidence was led to show that the deceased was earning ₹ 40,000/- per month. No income tax return has been produced on record nor the bahi entry was corroborated with reference to early and subsequent transactions recorded therein. Seeing the composition of the family, some guess work for assessing monthly income of the deceased-Dharampal has to be made. The appellant No.1, while appearing as PW-1 has deposed in the context of earning of the deceased and her statement was corroborated by PW-3 to some extent. The claim towards monthly income is wholly exaggerated, but the award of ₹ 5,000/- per month in considered opinion of this Court is on the lower side. It would be just an expedient to hold that a family of five persons would not have survived on the amount of ₹ 5,000/- per month. In all fairness, compensation has to be awarded on the basis of preponderance of probability. The proceedings before the Motor Accident Claims Tribunal are summary in nature and no strict evidence is required. The Court is always

under legal obligation to award just and adequate compensation to the family of the deceased, even if not prayed in the claim application.

4. Learned counsel for respondent No.3-Insurance company submits that no award for future prospects can be made in the light of controversy having been referred to the Larger Bench by the Hon'ble Apex Court in National Insurance Company Limited Vs. Pushpa and others.

5. I am of the view that the judgment referred to the Larger Bench for consideration has not stayed the judgment rendered in Rajesh and Ors. Vs. Rajbir Singh and Ors, (supra). The aforesaid judgment has been consistently followed by the Courts. As on the date no exception can be made out while awarding compensation to the future prospects. In Munna Lal Jain Vs. Vipin Kumar Sharma and others, 2015 (3) SCC 215, the ratio in relation to loss of future prospects was reiterated.

6. Secondly, learned counsel vehemently submitted that in the absence of any cogent evidence, no such income can be fixed. Since award of compensation is a part of welfare legislation. The proceedings being summary in nature and preponderance of evidence of probability is the key factor in determination of true and approximate composition. Courts are bound to grant realistic compensation to the claimants. Even, if bahi entry could not be appreciated, still the claimants led oral evidence in the form of PW-1 and PW-3. The award of ₹ 8,000/- per month keeping in view the composition of family members cannot be termed to be an income on the higher side. In view of the above observations, the arguments are rejected.

7. Taking into consideration all the necessary facts and attending circumstances, I am of the view that award of ₹ 8,000/- per month towards monthly income of the deceased would be just and appropriate. Four

claimants have come to Court to claim compensation on account of death of deceased-Dharampal, therefore, as per ratio laid down in Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr., 2009 (3) RCR (Civil) Page 77, deduction to the tune of 1/4th would be just an appropriate towards self expenses of the deceased.

8. In view of ratio laid down in Rajesh and Ors. Vs. Rajbir Singh and Ors., 2013 (9) SCC 54, future prospects in case of self-employed person has to awarded in addition to the monthly income. The deceased was 46 years of age. As per criteria laid down in said judgment, 30% of the monthly income has to be added in total monthly income of the deceased. Therefore, total computation under the head of monthly income after adding 30% towards future prospects comes out to be ₹ 10,400/- per month. Applying the ratio laid down in Sarla Verma's case (supra), 1/4th towards self expenses of the deceased has to be deducted. On such deduction, the monthly income of the deceased comes out to be ₹ 7,800/- per month. As per table given in Sarla Verma's case (supra), the multiplier of 13 has to be applied to the annual income of the deceased. Therefore, after applying the multiplier of 13, the resultant compensation comes to ₹ 12,16,800/- (93,600x13). An amount of ₹ 1,00,000/- towards consortium to the wife, ₹ 1,00,000/- towards loss of love and affection to the children, and ₹ 25,000/- towards funeral expenses are to be added towards conventional heads. On such addition, the total compensation comes out to be ₹ 14,41,800/-. In the light of aforesaid discussion, the award of the Motor Accident Claims Tribunal, Karnal is hereby modified and the amount of compensation is enhanced in the aforesaid manner. Out of the enhanced compensation, appellant No.1-Roshni Devi would get ₹ 5,000,00/- and the

remaining amount of compensation shall be shared equally by the claimants No.2 to 4, namely, Angrej Kumar, Ramesh Kumar and Naresh Kumar, sons of the deceased-Dharampal. Respondents No.1 to 3 are jointly and severally liable to pay the amount alongwith interest @ 7.5% per annum on the enhanced compensation from the date of filing of the claim petition till the final realization of the amount.

This appeal is disposed of in the aforesaid terms.

(RAJ MOHAN SINGH)
JUDGE

July 25, 2016
Ramandeep Singh

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Whether speaking / reasoned Yes / No

Whether Reportable Yes / No