IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6834-2011(O&M)
Date of decision : 24.10.2016

Asha Rani and others .... **Appellants**

versus

Rajesh alias Raju and another .... **Respondents**

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

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Present: Mr. Ashok Arora, Advocate for the appellants.

Mr.Sunil Saharan, Advocate for respondent No.1.

Mr.Suvir Dewan, Advocate for respondent No.2.

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REKHA MITTAL J. (Oral)

Asha Rani and others, the claimants are in appeal seeking enhancement of compensation in regard to death of Vinod in a motor vehicular accident that took place on 01.09.2001.

The Motor Accidents Claims Tribunal, Hisar(in short "the Tribunal) assessed income of the deceased at Rs. 4500/- per month, deducted 1/4th for personal expenses, adopted multiplier of 15 to compute loss of dependency. In addition, an amount of Rs. 5000/- each has been awarded on account of transportation of dead body, last rites and loss of consortium making total compensation to Rs. 06,17,500/- payable with interest at the rate of 6% per annum from the date of petition till realisation.

Counsel for the appellants has submitted that the deceased was a professional driver working with M/s Shiv Shakti Constructions at a salary of Rs. 10,000/- per month. This fact has been proved by Vivek Sharma (PW-6) but the Tribunal has wrongly discarded/ignored his testimony to assess compensation by determining salary of the deceased at Rs. 10,000/- per month. The claimants are entitled to benefit of future prospects to the extent of 50% in the light of judgement of Hon'ble the Supreme Court of India ***Rajesh and others v. Rajbir Singh and others (2013)3 RCR(Civil) 170.*** In addition, it is argued that compensation awarded under conventional heads needs enhancement and so also the rate of interest allowed by the Tribunal.

Counsel for the insurance company, on the contrary, has supported the award with the submission that testimony of Vivek Sharma (PW-6) is not sufficient to record a finding that the deceased was working as a driver with M/s Shiv Shakti Constructions much less at a salary of Rs. 10,000/- per month. It is further argued that the learned Tribunal has rightly relied upon the minimum wage for an unskilled worker to asses income of the deceased at Rs. 4500/- per month.

I have heard counsel for the parties, perused the paper book particularly the award passed by the learned Tribunal.

There cannot be any dispute about the settled position in law that the Tribunal has an obligation to assess just, reasonable and equitable compensation. Equally settled is that compensation cannot be intended to be a bonanza, largesse or source of profit. In the case at hand, claimants examined Vivek Sharma (PW-6) to prove that the deceased was working as a driver on Bolero Jeep bearing registration No. HR39A-6748 of the firm M/s Shiv Shakti Constructions. A relevant extract from cross-examination of Vivek Sharma (PW-6) reads as follows:-

> " *Today I have not brought any partnership deed or record to show that I am partner of the above said firm. Our partnership deed is registered. We used to maintain account regarding sale tax, profit and expenditure and loss etc. Vinod was employed in our firm in the year 2008. Today I have not brought any account of the firm to show that Vinod was working as a driver in our firm and we used to pay him Rs. 10,000/- as monthly salary. We have no record that we employed Vinod as driver. Today I have not brought appointment letter to show that we employed Vinod as driver."*

Testimony of Vivek Sharma (PW-6) with regard to his being connected with M/s Shiv Shakti Constructions, a partnership firm or employment of Vinod (since deceased) in the said firm does not find corroboration from any documentary evidence. The matter would have been different had the firm been not maintaining any record because in that eventuality a person cannot be called upon to create document and produce it before the Court. The very fact that Vivek Sharma did not produce any documentary evidence is sufficient to create a serious doubt in the mind of the Tribunal with regard to his testimony regarding employment of Vinod at a salary of Rs. 10,000/- per moth. In this view of the matter I do not find any error much less illegality in the findings of the Tribunal in assessing income of the deceased at Rs. 4500/- per month by taking recourse to the minimum wage available to an unskilled person in the State of Haryana.

The claimants would be entitled to increase in income for future prospects to the extent of 50%. In this manner, loss of dependency comes to

Rs. 06,07,500/-+ Rs. 03,03,750/- = Rs. 09,11,250/-.

Under conventional heads the widow is awarded an amount of Rs. 1 lac for loss of consortium, the minor children are awarded an amount of Rs. 1.5 lacs in equal shares and mother Rs. 50,000/- for loss of love and affection. The claimants would be entitled to an amount of Rs. 25,000/- each for expenses on funeral and loss to the estate. The total compensation comes to Rs.12,36,250/-and enhanced compensation comes to Rs. 06,18,750/-. The enhanced compensation would be payable to widow and minor children of the deceased in equal shares with interest at the rate of 7.5% per annum from the date of petition till realisation. The interest on the amount assessed by the Tribunal shall also be payable at the very same rate(7.5%) from the date of petition till realisation. The amount falling to the share of the minor children shall be deposited in fixed deposit receipt payable on their attaining the age of majority whereas share of the widow shall be deposited in a fixed deposit receipt for a period of three years.

The appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

October 24, 2016
sunita

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No