IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 2211 of 2013 (O&M)
Date of decision: 11.07.2016

Meera and others .... *Appellants*

Versus

Ram Sat and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Ajit Sihag, Advocate
for the appellants

Mr. Sandeep Suri, Advocate
for respondent No. 3-National Insurance Company

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J. (Oral)

Meera and others (claimants) are in appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Hisar (hereinafter to be referred as 'the Tribunal') in regard to death of Shri Ramesh Kumar on 18.01.2011 as a result of sustaining injuries in a motor vehicular accident on 13.02.2010.

The learned Tribunal assessed income of the deceased @ Rs.5,000.00 per month; allowed deduction of 1/4th towards personal and living expenses of the deceased; granted benefit of increase in income towards future prospectus to the extent of 50% and adopted a multiplier of

17 to calculate loss of dependency. Under the conventional heads, the Tribunal awarded an amount of Rs.25,000.00 towards loss of love and affection and consortium, Rs.5,000.00 each towards loss of estate and expenses of funeral.

Counsel for the appellants would contend that income of the deceased assessed by the Tribunal is on lower side and needs enhancement. It is argued that the deceased was carrying on business of sale of milk and a part time assistant on a vegetable shop. It is further submitted that compensation allowed under conventional heads also requires enhancement in the light of judgments of Hon'ble the Supreme Court of India ***Rajesh and others vs. Rajbir Singh and others (2013) 9 SCC 54*** and ***Vimal Kanwar and others v. Kishore Dan and others (2013-3) PLR 776.*** In addition, it is submitted that the deceased suffered a serious head injury as proved by Dr. Tarun Sapra (PW1) and required the services of an attendant for a period of about 11 months as he suffered injuries on 13.02.2010 and passed away on 18.01.2011. He remained admitted in the hospital at different intervals for a period of about 70 days.

Counsel for the National Insurance Company-respondent No. 3 (for brevity, 'the Insurance Company') has submitted that the learned Tribunal committed a gross error in allowing deduction of 1/4th towards personal expenses in place of 1/3rd as has been held in the authoritative pronouncement ***Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** reiterated in ***Reshma Kumari and others v. Madan Mohan and another, 2013 (2) R.C.R. (Civil) 660.***

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

There is no cogent and convincing evidence available on record to show that the deceased was doing the business of sale of milk and part time worker on a vegetable shop. The oral testimony of widow of the deceased, highly interested in success of claim petition, cannot be taken as sufficient to justify any increase in income more than what has been awarded by the learned Tribunal.

The Tribunal has allowed deduction of 1/4th towards personal and living expenses of the deceased whereas in view of number of dependents on earning of the deceased when examined in the light of judgments relied upon by counsel for the insurance Company, the same would be 1/3rd instead of 1/4th. In this view of the matter, the loss of dependency is calculated @ Rs.67,500x17 = Rs.11,47,500 + Rs.5,73,750 (50% future prospects) – Rs.5,73,750 (1/3rd deduction towards personal expenses) = Rs.11,47,500.00. The claimants shall be entitled to Rs.25,000/- each towards expenses on funeral and last rites and loss of estate. The minors are awarded an amount of Rs.1.5 lacs in equal share towards loss of love and affection. The widow shall be entitled to Rs.1,00,000.00 towards loss of consortium.

Dr. Tarun Sapra (PW1) has proved the nature of injuries, period of treatment as an indoor patient and the fact that on 18.11.2010, the patient was brought in comatose stage and was discharged on 02.12.2010 in semi conscious stage. In view of nature of head injury sustained, period of confinement in the hospital coupled with medical expenses incurred on treatment of the deceased, it is expedient in the interest of justice that the appellants are awarded an amount of Rs.50,000.00 towards services of an attendant during medical condition of the deceased. The amount awarded by the Tribunal for medical expenses i.e. Rs.5,05,463.00 is affirmed. In this manner, the total compensation payable to the appellants comes to Rs.20,02,963.00.00 and the enhanced compensation is Rs.20,02,963.00 – Rs.16,87,963.00 (wrongly calculated by the Tribunal as Rs.16,92,960.00) = Rs.3,15,000.00 payable with interest @ 7.5% per annum from the date of filing of the petition till payment thereof. The amount allowed towards loss of love and affection shall be paid to the children whereas remaining amount shall be paid to the widow. The amount falling to share of minor-claimants shall be deposited in Fixed Deposit Receipt in a nationalized Bank payable to them on attaining the age of majority. The amount of interest accruing on the FDRs shall be payable to mother of the minors to meet expenses on their education and living.

Disposed of accordingly.

(Rekha Mittal)
Judge

11.07.2016
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