In the High Court of Punjab and Haryana at Chandigarh

FAO No. 4430 of 2013(O&M)
Date of Decision:July 11, 2016

Oriental Insurance Company Limited

---Appellant

vs.

Jasvir Kaur and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr.Lalit Garg, Advocate
for the appellant

Mr. Naveen Sharma, Advocate
for respondent Nos. 1 to 3

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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?

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Rekha Mittal, J.

The present appeal lays challenge to award dated 30.5.2013 passed by the Motor Accident Claims Tribunal, SAS Nagar Mohali (in short "the Tribunal") whereby the respondents/claimants have been awarded compensation in respect of death of Gagandeep Singh in a motor vehicular accident that took place on 1.10.2011. The learned Tribunal assessed income of the deceased at Rs. 9,000/- per month, deducted 1/3rd towards personal and living expenses of the deceased, adopted a multiplier of 18 and thus, calculated loss of dependency to the tune of Rs. 12,96,000/-. Another amount of Rs. 10,000/- has been awarded towards funeral expenses making total compensation of Rs. 13,06,000/- payable alongwith interest @ 6% per annum to be shared by the respondents, as determined in para 14 of the judgment.

Counsel for the appellant would contend that in view of discussion made in para 12 of the judgment for decision of issue No. 2, the Tribunal assessed income of the deceased to the tune of Rs. 3,000/- per month by way of commission as a newspaper hawker and another amount of Rs. 3,208/- paid as a stipend by a company namely Competent Synergies Private Limited, Mohali but wrongly assessed his income to the tune of Rs. 9,000/- per month.

Another submission made by counsel is that as the deceased was unmarried son of respondents Jasvir Kaur and Piyara Singh, 50% of the income is liable to be deducted towards personal and living expenses in the light of enunciation laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**.

Counsel for the respondents has supported the award with the submissions that as benefit of increase in income towards future prospects has not been allowed and in view of age of the deceased, the same would be admissible to the extent of 50%, the income of the deceased after taking into consideration future prospects would not be less than Rs. 9,000/- per month. So far as plea with regard to deduction towards personal expenses, it is argued that as the claim petition was preferred by three claimants i.e. parents and sister of the deceased, deduction to the extent of $1/3^{rd}$ has rightly been allowed.

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

There cannot be any dispute about the settled position in law that the Tribunal has an onerous obligation to assess compensation that is fair, just and reasonable. Just and fair compensation would depend upon the facts and circumstances obtaining in a particular case.

In the case at hand, the deceased was 19 years old and was unmarried. The claim petition has been preferred by parents and sister of the deceased. The learned Tribunal has held that the deceased was earning commission to the tune of Rs. 3,000/- per month as a newspaper hawker and getting stipend of Rs. 3,208/- from a company. The income of the deceased, in the abovesaid manner would be Rs. 6,208/- but the learned Tribunal has assessed his income to the tune of Rs. 9,000/- per month. However, it remains a fact that the learned Tribunal has not allowed benefit of increase in income towards future prospects in view of judgment of Hon'ble the Supreme Court of India ***Rajesh and others vs. Rajbir and others 2014(1) PLR 779***. Keeping in view income of the deceased and after extending benefit of increase in income for future prospects, there would be no change with regard to assessment of income of the deceased at the rate of Rs. 9,000/- per month.

The Tribunal has allowed deduction to the extent of 1/3rd by taking into consideration number of the claimants to be three i.e. mother, father and unmarried sister of the deceased. In the concluding lines of discussion on issue No. 2, the Tribunal has held that the claimants/petitioners being mother, father and unmarried sister of the deceased are entitled to receive compensation. There is not even a whisper in the award that Ms. Mandeep Kaur aged about 25 years sister of the deceased was dependent on his earnings. There is no finding recorded by the Tribunal that father of Mandeep Kaur is not in a position to maintain her or in other words, she was not dependent upon her father for her needs and maintenance. Counsel for the respondents has not pointed out any materials on record to make out a case of special circumstances wherein deduction less than 50% is required to be made. That being so, I find merit in contention of the appellant that deduction for personal and living expenses of the deceased would be 50% in place of 1/3rd. After allowing deduction to the extent of 50%, the loss of dependency comes to Rs. 4500 x 12 x 18 =9,72,000/-.

The respondents shall be entitled to Rs. 25,000/- as funeral expenses. The parents of the deceased are allowed an amount of Rs. 50,000/- each for loss of love and affection of their child. The total amount of compensation comes to Rs. 10,97,000/-. The amount of compensation is reduced to the tune of Rs. 2,09,000/-.

Counsel for the appellant has submitted that the appellant has already deposited 90% of the compensation awarded by the Tribunal, that is more than the compensation payable to the respondents, therefore, an amount of Rs. 25,000/- deposited by the appellant may be refunded. The Registry is directed to refund the amount of Rs. 25,000/- to the appellant after seeking necessary verification/report that the appellant has already deposited the amount that becomes payable under the orders of this Court. This apart, the appellant shall be entitled to recover excess payment of compensation made to the claimants.

Appeal stands disposed of accordingly.

(Rekha Mittal)
Judge

July 11, 2016
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