IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3893 of 2014
Date of decision : 04.02.2016.

Smt. Maujabi

.... Appellants

Vs.

Jahul and another

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : None for the appellant.

Mr. Ashish Gupta, Advocate,
for respondent No.1.

Mr. V. Ramswaroop, Advocate,
for respondent No.2.

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AMOL RATTAN SINGH, J.

Civil Misc. Application No.11852-C of 2014

By this application, condonation of 50 days in re-filing the appeal is sought, along with which an affidavit of the counsel for the appellant has been annexed.

It has been stated therein that the appeal had been filed on 08.11.2013 but was returned by the Registry raising certain technical objections, after which the Clerk of the counsel had misplaced the brief of the present appeal which was kept in a bundle of decided case and was thereafter traced on 09.04.2014. Consequently, a delay of 50 days has occurred in re-filing the appeal.

For the reasons given and the fact that eventually it would be the appellant-claimant who would suffer, the application is allowed and the delay of 50 days in re-filing the appeal is condoned.

Civil Misc. Application No.11853-C of 2014

Notice in this application for condonation of 116 days delay in filing the appeal had been issued by this Court, along with the notice issued in the main appeal itself. However, the respondents have not filed any reply to the application.

A perusal of the application shows that the reason given for delay in filing the appeal is that the appellant had handed over the paperbook to her relative for engaging a counsel for filing the present appeal, being a lady belonging to Rajasthan, but the relative had not done so. The appellant is stated to have come to know on 03.11.2013 that the appeal had not been filed and thereafter had come to this Court to engage a counsel.

She is stated to be an illiterate lady, widowed after the death of her husband, who is not aware of the practices and procedures of Courts and hence has filed this appeal after the delay aforesaid.

For the reasons given in the application, as referred to above, the application is allowed and the delay of 116 days in filing the appeal is also condoned.

FAO No.3893 of 2014

This is an appeal filed by the widow of Rehman who unfortunately died in a motor accident on 06.02.2011. The appellant was the claimant before the learned Motor Accident Claims Tribunal, Nuh, District

Mewat.

2. It was stated in the claim petition that Rehman was travelling in a jeep bearing registration No.HR-39-6962 from Punhana to Nagina, alongwith 20 to 25 other passengers, also stated to be travelling in the said jeep, driven by respondent No.1, who was the owner and driver thereof. The jeep was insured with respondent No.2, United India Insurance Company Limited.

When the jeep reached near village Nasirpur, respondent No.1 is stated to have applied the brakes very hard, upon a ditch coming in front of the jeep, on account of which it turned turtle being at a high speed, resulting in injuries suffered by 10/12 passengers travelling in it. All the injured were taken to General Hospital, Mandikhera, including Rehman, husband of the appellant.

Rehman unfortunately succumbed to his injuries, possibly at the spot itself or on the way, because as per the Award of the Tribunal, only the post mortem examination is stated to have been conducted at the said hospital.

3. An FIR was also registered for the alleged commission of offences punishable under Sections 279/337/304-A IPC, against respondent No.1, at Police Station Punhana.

Though, in the written statement filed before the Tribunal, respondent No.2 had claimed that the accident did not take place in the aforesaid jeep, the learned Tribunal eventually came to the conclusion, on the basis of statements of witnesses, that the negligence in causing the accident was that of respondent No.1, with no evidence led to the contrary by the respondents.

4. Having held as above, the learned Tribunal, however, also came to the conclusion that respondent No.1 was not holding an effective driving licence and as such, had violated the terms and conditions of the insurance policy and eventually, the insurance company was directed to pay the total compensation awarded, with rights of recovery against respondent No.1.

The finding of the Tribunal with regard to the issue of negligence against respondent No.1, or even the rights of recovery granted to the 2nd respondent against the first, not being under challenge before this Court by either of the respondents, this Court is only to look at the issue of grant of enhancement of compensation, if any, to the appellant.

Even so, it needs to be noticed by this Court that as recorded by the Tribunal, 20 to 25 passengers, including deceased Rehman, were stated to be travelling in the jeep. Normally, in such a situation, if the deceased/injured passengers got on to the jeep, seeing so many other of passengers in it, some contributory negligence at least would be attributable to such passenger. However, since firstly, it is not forthcoming from any evidence either discussed in the Award, or pointed out by the counsel for the respondents, this not being their appeal against the Award, it cannot be stated as to the capacity of the vehicle in which the deceased was travelling. Secondly, even if the capacity of a vehicle described as a jeep, is taken to be not more than 7 to 8 passengers, including the driver, there is no evidence discussed, with regard to Rehman having boarded the vehicle afterwards, despite the number of passengers already seen in the vehicle. As such, the possibility cannot be ruled out that Rehman may have been one of the first passengers, after which the other passengers were taken on by respondent

No.1.

Hence, with no evidence having been led on that issue, in this appeal by the claimant, nothing more need be said.

5. Deceased Rehman was stated to be 50 years of age, both according to the appellant, as also per his age assessed in the post mortem report and consequently he was held to be of that age, when he died.

Though the appellant claimed that Rehman was earning Rs.15,000/- per month, there was no evidence led to prove that, therefore, his income was taken to be Rs.4200/- per month, i.e. the approximate income of a daily wager, in the year 2011.

A 1/3rd deduction was made towards the personal and living expenses of the deceased and consequently the dependency of the appellant on the income of the deceased, was assessed to be Rs.2800/- per month, working out to Rs.33,600/- per annum. A multiplier of 13 was applied and the total loss of income was assessed at Rs.4,36,800/-.A sum of Rs.5,000/- was awarded towards loss of consortium and another sum of Rs.5,000/- towards funeral expenses. Rs.10,000/- was also awarded as loss of estate, thereby bringing the total compensation awarded to be Rs.4,56,800/-.

Interest @ 6% per annum, from the date of filing of the claim petition till the date of its realization to the appellant, was also awarded by the learned Tribunal, all of which was held, as already noticed, payable at the first instance by the Insurance Company (presently respondent No.2) and thereafter recoverable from respondent No.1.

No appeal of either the Insurance Company or of respondent No.1, against the impugned award of the Tribunal, has been brought to the notice of this Court.

6. This appeal having been called twice with none putting in appearance for the appellant, it is being decided in absence of her counsel, in the presence of the counsel for the respondents. However, a perusal of the order sheet reveals that counsel for the appellant had been appearing earlier.

From a perusal of the award, no fault can be found with the assessment of income that the deceased Rehman was taken to be earning, on the basis of approximate minimum wages of an unskilled labourer in the year 2011. In view of the fact that no evidence whatsoever was led before the Tribunal in respect of any higher income earned by him, that finding is kept intact.

The Tribunal deducted 1/3rd of that income towards the personal expenses of the deceased had he remained alive, as already noticed, which this Court is also not inclined to interfere with. Though the only dependent of the deceased is obviously the appellant alone, there being no other claimant before the Tribunal either, however, in running a household, it cannot be said that the earning hand would be spending half the income on himself. He would be normally trying to make some kind of saving or, after retaining some amount as expenses for himself, he would pay the remaining to his spouse who runs the household in terms of buying daily necessities etc., possibly saving the rest.

Therefore, I find no reason for further deduction to the dependent income of the appellant, as nothing to the contrary has been brought to my notice. Though learned counsel appearing for the respondent did make a reference to this issue, without substantiating his argument, in any case this not being an appeal of the respondent, and for the reasons given herein above, that deduction of 1/3rd of the deceaseds' income towards his personal expenses, as made by the Tribunal while calculating the total dependency, is also kept intact.

In **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and others**, 2009 (6) SCC 121, it was held that when the deceased is in the age group of 46-50 years, a multiplier of 13 should be applied, which was also duly applied by the Tribunal. Hence, I find no fault with that part of the award either.

7. What the Tribunal has omitted to award, is the loss of future prospects of income of the deceased, as per the ratio of the law laid down in Sarla Vermas' case (supra) and subsequently in **Rajesh Vs. Rajbir Singh**, (2013) 9 SCC 54 and in **Vimal Kanwar Vs. Kishore Dan** (2013) 7 SCC 476.

In these cases, it had been held that the loss of prospects of future earnings of the deceased, need to be factored in, to the loss of dependent income of the claimants, and though in **Sarla Verma** case the said principle was held applicable only in the case of salaried employees who become victims in a motor accident, however, in the subsequent cases, it was also held applicable to a self employed person who was earning an income, which in normal circumstances would have increased even as per rates of inflation, if not by increase in the business/profession etc. of the deceased, had he remained alive. It was held in these cases, that in the case of a deceased who was below 40 years of age, 50% of the income would be added by way of loss of prospects of future earnings, to his existing income as on the date of death, and for a person between the age group of 40 to 50 years, the loss would be assessed @ 30% of his existing income.

In the case of a person in the age group between 50-60 years, an addition of 15%, to the existing income is to be added to the existent income of the deceased, to calculate the loss of dependent income which is to be awarded to the claimant.

Applying the aforesaid principle to the present case, the annual dependent income of the appellant, would work out to be Rs.38,640/- (Rs.2800x12=Rs.33600+15% (5040)= Rs.38640/-). Thus, after factoring in the multiplier of 13, the total loss of dependent income payable to the appellant, would be Rs.5,02,320/-.

8. Coming to the loss of consortium to be awarded, the Tribunal awarded only Rs.5,000/- which is to be enhanced to Rs.1 lac, in terms of the ratio of the law laid down in the case of Rajesh (supra) and Vimal Kanwar (supra). Consequently, Rs.1 lac is awarded to the appellant for loss of consortium.

Further, Rs.10,000/- was awarded by the Tribunal for the loss of estate and last rites, whereas in the aforesaid two cases, a sum of Rs.25,000/- was awarded by the Supreme Court, by way of funeral expenses. In **Rajeshs'** case, the death of the deceased had occurred on 05.10.2007 and in **Vimal Kanwars'** case it had occurred on 14.09.1996.

In the present case, deceased Rehman unfortunately died on 06.02.2011. Hence, Rs.25,000/- needs to be awarded to the appellant towards his loss of rites, even as per the ratio of the aforesaid judgments and is accordingly awarded. Thus, the total compensation now awarded is as under:-

i)	Loss of dependent income, including the loss of future prospects of such income	:	Rs.5,02,320/-
ii)	Loss of consortium	:	Rs.1,00,000/-

iii)	Last of rites and funeral expenses	:	Rs.25,000/-
	Total	:	Rs.6,27,300/-

Thus, with the Tribunal having awarded Rs.4,56,800/- to the appellant, the enhancement by this Court is of Rs.1,70,520/-. The aforesaid enhanced amount would carry an interest @ 6% per annum, from the date of filing of the claim petition till the date of its realization to the appellant.

The amount payable would first be paid by respondent No.2, i.e. the Insurance Company, which would be recoverable by the company from respondent No.1, i.e. the owner and driver of the offending vehicle, as per what was held by the Tribunal.

The appeal is accordingly partly allowed to the above extent. No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

04.02.2016
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