IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2975 of 2015 (O&M)
Decided on: 04.11.2016

Chander Kanta and others

....Appellants

Versus

Jasvir Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Hardip Singh, Advocate
for the appellants.

Ms. Monika Jalota, Advocate
for respondents No.1 and 2.

Mr. Arvind Arora, Advocate
for respondent No.3.

REKHA MITTAL, J.

CM No.8974-CII of 2015

Prayer in this application is for condoning delay of 15 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Chander Kanta, the applicant-appellant, the application is allowed and delay of 15 days in filing the appeal stands condoned.

FAO No.2975 of 2015

The claimants are in appeal seeking enhancement of compensation in regard to death of Om Parkash in a motor vehicular accident that took place on 19.09.2013.

The learned Tribunal assessed income of the deceased at Rs.6,000/- per month, allowed benefit of future prospects to the extent of 30%, deducted 1/4th for personal expenses and adopted a multiplier of 14 to compute loss of dependency at Rs.9,82,800/-. In addition, an amount of Rs.1,00,000/- for loss of consortium to widow and Rs.25,000/- for funeral expenses was awarded making total sum of Rs.12,07,800/-.

Counsel for the appellants has submitted that Om Parkash (deceased) was cultivating 08 acres of land taken on *theka* from Ram Kishan PW3. He was also carrying on the business of sale of milk and earning Rs.30,000/- per month. It is argued that one of the daughters of the deceased Jagriti Raheja was a student of B.A. final year and Mehul Raheja son was studying in Ludhiana Central Tool Room doing engineering course. The claimants produced on record copies of documents in regard to expenses incurred on education of the children sufficient to prove that the deceased had much more income than what is assessed by the Tribunal. It is further argued that compensation awarded under conventional heads also needs enhancement.

Counsel for the insurance company has submitted that none of the documents relied upon by the claimants is proved in accordance with law. The documents were marked as an exhibit with an objection from counsel opposite in the statement of Sh. A.L. Aggarwal, Advocate recorded on 27.10.2014. It is further submitted that the claimants have failed to adduce satisfactory much less cogent and convincing evidence to prove that the deceased had taken land on *theka* from Sh. Ram Kishan or doing the business of dairy, thus, having income from land and sale of milk. It is further submitted that the learned Tribunal has rightly refused to rely upon the documents and negated plea of the claimants that the deceased was earning Rs.30,000/- per month.

Counsel for respondents No.1 and 2 has echoed the arguments advanced by counsel for the insurance company.

I have heard counsel for the parties, perused the paperbook and the records.

Chander Kanta, widow of the deceased tendered into evidence her affidavit Ex.CW1/A. In para 4 of the affidavit, she has deposed that the deceased was a farmer, cultivating land measuring 08 acres which he had taken on lease (*theka*) and was also running a business of milk and was earning Rs.30,000/- per month from land and milk business. She has further deposed that claimant No.2 is studying in B.A. final year and claimant No.3 in CTR (Central Tools Room), Ludhiana Tools and Alliance Technical Engineering. In her cross-examination, she has deposed that she did not know what was the income from the *theka*. She did not remember the name of person(s) who were employed with her husband for doing agricultural labour. She cannot bring the papers concerning land of *theka*. She has admitted that her husband was not an income-tax assessee.

Ram Kishan PW3 tendered into evidence his affidavit Ex.CW3/C. He was examined to prove that the deceased has taken his land measuring 08 acres on lease situated at village Karhali @ Rs.35,000/- per acres and in this regard, a lease agreement was executed between him and Om Parkash. In his cross-examination, he has stated that he has not produced *Jamabandi* of alleged agricultural land in the Court. He has not changed the *Girdawari* in the name of deceased – Om Parkash. He had issued the receipt of agricultural land to deceased.

Neither Chander Kanta nor Ram Kishan produced any document on record with regard to deceased having taken any land on lease from Ram Kishan. As has been noticed hereinbefore, documents were marked as Ex.C1 to C49 in the statement made by counsel for the claimants with an objection from counsel opposite. No doubt, strict principles of law of evidence are not applicable to the proceedings before the Tribunal, summary in nature. At the same time, once the claimants had examined Sh. Ram Kishan to prove that the deceased had taken land on *theka*, Ram Kishan was the best person to produce the lease deed and the documents in regard to his ownership of land. Admittedly, agreement of lease is not a registered document. There is nothing on record suggestive of the fact that in pursuance of this agreement Ex.C6 any lease deed was executed between Ram Kishan and Om Parkash (since deceased). There is no documentary evidence with regard to payment of lease money by the deceased to Sh. Ram Kishan. Under these circumstances, the Court has rightly refused to rely upon testimony of Ram Kishan and the document that the deceased was cultivating 08 acres of agricultural land. It further appears that as the deceased was not actually cultivating any land, for that reason, widow of the deceased was not able to specify as to what was the income derived from the land. Admittedly, the claimants have not examined any person who had been assisting the deceased in cultivating the land as an agricultural labour. Similarly, the claimants have failed to adduce tangible evidence with regard to dairy business of the deceased.

However, there is no challenge to testimony of the claimant (widow) that one daughter of the deceased was a student of B.A. final year and his son a student of Central Tools Room, Ludhiana. The claimants tendered into evidence certain receipts as an evidence of payments made to CTR (Central Tools Room), Ludhiana Mess Committee. The same have not been proved by any of the witnesses examined in the case. Keeping in view the oral evidence in the light of testimony of Chander Kanta coupled with the factum that two children of the deceased were studying and getting a clue from minimum wage available to an unskilled worker in the State of Punjab in September, 2013, income of the deceased is assessed at Rs.7,000/- per month. After allowing benefit of increase for future prospects to the extent of 30% and making deduction for personal and living expenses to the extent of 1/4th, loss of dependency per annum comes to Rs.81,900/-. The deceased was 46 years old, therefore, in the light of judgment in ***"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another",*** **2009(3) R.C.R. (Civil) 77**, appropriate multiplier would be 13. In this manner, loss of dependency comes to ***Rs.10,64,700/-*** (Rs.81,900/- x 13).

Under conventional heads, compensation awarded by the Tribunal with regard to loss of consortium to the widow ***Rs.1,00,000/-*** and ***Rs.25,000/-*** for expenses on funeral is affirmed. The deceased left behind three children, two daughters and one son. The children shall be entitled to an amount of ***Rs.2,25,000/-*** in equal share for loss of love and affection. The claimants shall be entitled to an amount of ***Rs.25,000/-*** for loss of estate. In this manner, total compensation comes to ***Rs.14,39,700/-*** and the enhanced compensation is ***Rs.2,31,900/-*** (Rs.14,39,700/- – Rs.12,07,800/-).

The enhanced compensation shall be payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased and the same shall be deposited in a fixed deposit receipt for a period of two years.

Disposed of accordingly.

04.11.2016 **(REKHA MITTAL)**
yakub **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No