IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4608-2014 (O&M)
(MACT No.120-2013)
Date of decision: 24.5.2016

Smt.Anita and others

...Appellants

Versus

Mukesh Kumar and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.JP Sharma, Advocate for the appellants

Mr.JK Sehrawat, Advocate for respondents No.1 & 2

Mr.Suvir Dewan, Advocate for respondent No.3.

****

SNEH PRASHAR, J.

This is an appeal filed by the claimants-appellants for enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal'), vide award dated 2.1.2014, on account of the death of Ashok Kumar, (husband of appellant no.1, father of appellants No.2 and 3 and son of appellant No.4) in a motor vehicular accident that took place on 23.3.2013.

The submissions made by Mr.JP Sharma, Advocate representing the appellants, Mr.JK Sehrawat, Advocate for respondents No.1 and 2 and Mr.Suvir Dewan, Advocate for respondent No.3-Insurance Company have been heard and record perused.

It is submitted by learned counsel for the appellants that the deceased was a proficient driver, as he was having a driving licence to drive heavy motor vehicle and used to earn Rs.30,000/- per month, but learned Tribunal had wrongly assessed his income as Rs.4500/- per month treating him to be a casual labourer. Learned counsel also asserted that no amount has been awarded on account of future prospects, for loss of love, care and guidance to the children and loss of love and affection to the mother. The amounts awarded towards loss of consortium and last rites are also on the lower side.

Controverting these submissions, learned counsel appearing for respondent No.3- Insurance Company asserted that the compensation amount awarded to the claimants-appellants is just and adequate.

There is no denial of the fact that the death of Ashok Kumar occurred due to the injuries sustained in a motor vehicular accident caused by respondent No.1- Mukesh Kumar, driver of the offending vehicle. As regards income of the deceased, the claimants alleged that he was a trained driver as he possessed a driving licence valid for driving heavy transport vehicle as well as heavy passenger vehicle. Firstly, there is nothing to indicate that the driving licence is a valid document. Secondary, no substantive and reliable evidence could be led by the claimants to support their claim that the deceased was employed as a driver and was earning Rs.30,000/- per month. Neither the employer, on whose traula he was employed as driver was examined, nor any receipt / copy of bank pass book was produced. As such, the amount of Rs.4500/- per month assessed as monthly income of the deceased by learned Tribunal, which was the amount a daily wager could earn in the year 2013 is adequate and justified. Since, the deceased was 28 years aged, learned Tribunal applied the multiplier of 17 and there being four dependents deduction of $1/4^{th}$ towards personal and living expenses of the deceased is appropriate.

However, perusal of the award shows that no amount was added to the income of the deceased computing his future prospects. Following the law laid down in **Rajesh and others vs. Rajbir Singh and others (2013) 9 SCC 54**, the deceased being 28 years aged at the time of accident, an addition of 50% to his actual income towards future prospects is allowed.

Perusal of the award shows that while awarding compensation under the conventional heads, no amount has been allowed towards loss of love, care and guidance to the children, who are still minor and absence of father in their life can make things harder for them. Following the ratio of **Rajesh and others' case (supra)** on account of loss of love, care and guidance to the children, a sum of Rs.one lac is allowed in equal shares. The amount awarded on account of loss of consortium to the widow is enhanced from Rs. 10,000/- to Rs. one lac. Further a sum of Rs.25,000/- is allowed being expenditure on funeral and last rites including the amount already awarded and Rs.50,000/- is allowed on account of loss of love and affection to the mother subject to her furnishing life certificate.

Accordingly, the total compensation comes to Rs.13,28,750/- i.e. Rs.4500/- (monthly income) + 50% (future prospects)-$1/4^{th}$ (deduction towards personal and living expenses of the deceased) x 12 x 17 (multiplier) + Rs.2,75,000 /- (conventional heads) +

21000 (for medical expenses already awarded by the Tribunal). The enhanced amount of Rs.5,99,250/- (13,28,750-7,29,500 already awarded) shall be paid to the appellants within two months from the date of receipt of the certified copy of this judgment, failing which, it shall carry interest @ 7.5 % per annum from the date of filing of the appeal till its realisation.

In view of the above, the present appeal is partly allowed and the award is modified to the above extent.

24.5.2016 **(SNEH PRASHAR)**
gsv **JUDGE**