IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4609-2014 (O&M)
(MACT No.119-2013)
Date of decision: 24.5.2016

Smt.Birmati

...Appellant

Versus

Mukesh Kumar and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.JP Sharma, Advocate for the appellant

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

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

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SNEH PRASHAR, J.

Claimant-appellant being the wife of deceased Lal Chand, who lost his life in a motor vehicular accident, filed the present appeal seeking enhancement of the compensation amount awarded by learned Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal'), vide award dated 2.1.2014

The submissions made by Mr.JP Sharma, Advocate representing the appellant, 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 appellant that the deceased was a Teacher in Government Middle School, Surjanwas. He was 55 years aged at the time of his death. Learned Tribunal erred in deducting 1/2 instead of 1/3rd towards personal and living expenses of the deceased when there were three dependents. Learned counsel further submitted that the claimant was not adequately compensated under the conventional heads also.

On the other hand, learned counsel for respondent No.3-Insurance Company asserted that both the sons of the deceased were major and not dependent on the income of the deceased, thus, learned Tribunal rightly rejected their claim.

Death of Lal Chand on account of injuries sustained by him in a road side accident that took place on 23.3.2013 is not in issue. He was 55 years aged and was posted as a SS Teacher in Government Middle School, Surjanwas at the time of his death. He was to retire at the age of 58 years, which means he still had about 3 years service to his credit. It was proved by PW4 Yashwant, Clerk, Office of Block Education Officer, Kanina that the family of the deceased would be getting full salary for the remaining period of service of the deceased under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employee Rules, 2006. Accordingly, learned Tribunal after deducting the income tax payable on the total income of the deceased assessed his actual income as Rs.4,89,931/- per annum. Following the law laid down by this court in **Reliance General Insurance Co. Ltd. vs. Purnima and others 2014 ACJ 307,** adopting the method of split multiplier, applied the multiplier of 9 to half of the income i.e. Rs. 2,44,966/- for calculating the loss of dependency of the appellants, which calls for no intervention.

Further learned Tribunal erred in making deduction of 1/2 of the income towards personal and living expenses of the deceased. In her cross examination, claimant Birmati, wife of the deceased has specifically deposed that among petitioners No.2 and 3 (respondents No.4 and 5 herein) petitioner No.2 is an agriculturist and petitioner No.3 is a student. She also deposed that her husband was the only earning member of the family, which means that the sons, who are still to young were also dependents on the income of their father. Moreso, there is nothing to indicate that the deceased was living separately from his sons, who are class-I his legal representatives. Accordingly, there being three dependents 1/3rd of the income of the deceased is to be deducted towards personal and living expenses of the deceased.

Perusal of the award shows that a sum of Rs.10,000/- for loss of consortium and Rs.10,000/- on account of funeral charges were allowed to the claimant-wife, which is on a lower note. Following the law laid down in **Rajesh and others vs. Rajbir Singh and others (2013) 9 SCC 54**, the amount awarded towards loss of consortium and funeral expenses is enhanced to Rs.one lac and Rs.25,000/- respectively. Further a sum of Rs.25,000/- each is allowed to both the sons on account of loss of love, care and guidance.

Accordingly, the total compensation comes to Rs.16,44,796/- i.e. Rs.2,44,966/- (annual income) -1/3rd (deduction towards personal and living expenses of the deceased) x 9 (multiplier) + Rs.1,75,000 /- (conventional heads). The enhanced amount of Rs.5,72,449/- (16,94,796-11,22,347 already awarded) shall be paid to the appellant/claimant and respondents No.4 and 5 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. The amount except the loss of consortium awarded to the wife and loss of love, care and guidance to both the sons, will be disbursed to the claimants namely mother and two sons in the ratio of **60:20:20.** If, the amount has already been paid to the claimant-mother exceeding to her share, the same will be adjusted in the enhanced amount.

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**