IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4650-2014 (O&M)
Date of decision: 16.2.2016

Madhu Malhotra and others

...Appellants

Versus

Mohd. Aslam and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.RB Gupta, Advocate for the appellants

Mr.Davinder Lubana, Advocate for respondents No.1 & 2

Mr.Arun Sharma, Advocate for
Mr.TK Joshi, Advocate
for respondent No.3-Insurance Company

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SNEH PRASHAR, J.

Claimants-appellants being wife and children of deceased Vijay Malhotra, who lost his life in a motor accident, filed the present appeal seeking enhancement of the compensation amount awarded by learned Motor Accidents Claims Tribunal, Faridabad (in short 'the Tribunal'), vide award dated 18.7.2013.

The submissions made by learned counsel for the parties have been heard and record perused.

It is submitted on behalf of the appellants that the deceased was running his own business of fabrication work under the name and style M/s M.D.Steel Fabricator Faridabad and used to earn Rs.25,000/- per month. However, learned Tribunal taking him as casual labourer assessed his income as Rs.4700/- per month. Also no addition in income was made computing the future prospects.

Learned counsel further submitted that from the site of accident the deceased was firstly taken to Navchetna Hospital, Faridabad, where he remained admitted from 30.11.2011 to 5.12.2011. His condition being serious, he was taken to Manocha Clinic, Faridabad. As his condition deteriorated further, he was referred to Safdarjang Hospital, Delhi, where unfortunately he died on 28.12.2011. The appellants spent a sum of Rs.30,000/- on his treatment, transportation etc. but learned Tribunal awarded no amount under that count. The amount awarded on account of loss of consortium and last rites is inadequate, whereas no amount has been allowed to the children on account of loss of love, care and guidance.

On perusal of the record, it emanates that except for the bald statement of PW1- Madhu Malhotra, wife of the deceased, no substantive and reliable evidence was led by the claimants to prove that the deceased was running his own business of fabrication and was earning Rs.25,000/- per month. In absence of required evidence, leaned Tribunal rightly assessed the income of the deceased as

Rs.4700/- per month treating him to be a casual labourer.

The deceased was 56 years old at the time of his death. As no amount has been awarded towards future prospects, therefore, keeping in view the law laid down by Hon'ble Supreme Court in **Rajesh and others vs. Rajbir Singh and others (2013) 9 SCC 54**, increase in income to the extent of 15% towards future prospects is allowed.

Admittedly, the deceased remained under treatment for about a month at various hospitals before he succumbed to the injuries and died. PW3 Dr. Pankaj Tuli proved receipt of Rs.27,000/- charged by him on account of treatment. No other medical bill or receipt was tendered in evidence by the claimants. There is no reason to decline the said amount incurred by the claimants on treatment of the deceased. Accordingly, the sum of Rs.27,000/- is allowed.

The claimants are the wife and two children i.e. one son and one daughter. No amount has been allowed on account of loss of love, care and guidance, therefore, in view of law laid down in **Vimal Kanwar and others vs. Kishore Dan and others (2013-3) PLR 776**, a sum of Rs.One lac is allowed to both the children and the amount awarded towards loss of consortium and last rites is also enhanced to Rs.One lac and Rs.25,000/- respectively.

Accordingly, the total compensation comes to

Rs.7,27,640/- i.e. Rs.4700 (monthly income)+ 15% (future prospects) -1/3rd (deduction on account of living and personal expenses of the deceased) x 12 x 11 (multiplier) + Rs.2,25,000 (conventional heads including already awarded)+ Rs.27,000 (treatment expenses). The enhanced amount i.e. Rs.2,89,040/- (7,27,640- 4,38,600) shall be paid to the appellants by the Insurance Company within two months from the date of the receipt of the certified copy of this judgment, failing which, it shall carry interest at the rate of 7.5% per annum from the date of the filing of the appeal till its realisation.

In the above premises, the present appeal is partly allowed and the impugned award is modified as noticed above.

16.2.2016 **(SNEH PRASHAR)**
gsv **JUDGE**