IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

XOBJC No. 55-CII of 2015 in/and
FAO No. 4664 of 2014
Date of decision: 05.04.2016

Balvir Ram and others

... Appellants

versus

Jajwinder Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajkapoor Malik, Advocate for the appellants.

Mr. Vishal Aggarwal,Advocate, for the respondent.

K.Kannan, J. (ORAL)

The appeal has been filed under Section 163-A pleading for application of the income as Rs. 5,000/- because the Hon'ble Supreme Court has found that Schedule II has become outdated. If the Schedule has become outdated, the judgment must be seen as exhortation of the Legislature to amend the law and neither the Tribunal nor the High Court has power to amend the law unless the validity of the law itself has been put to challenge under Section 226 before the Hon'ble Surpeme Court.

The Tribunal has done and approached the case even more exuberantly than what was necessary. It has allowed Rs. 10,000/- as funeral expenses. In the manner of applying the deduction, the Tribunal has applied 50% deduction which is against the provision in Schedule II. Principle under Section 166 that was dealt with in Sarla Verma Vs. Delhi Transport Corporation 2009 (3) RCR (Civil)77 cannot be applied to claim under Schedule II. All that is necessary is that the legal representatives shall be persons who qualify as such under the Scheme of Motor Vehicles Act. The brothers and sisters who are surely the legal heirs and also therefore the LRs. If the income is taken at Rs. 3,300/- providing for 1/3rd deduction the extent of dependancy will be 2/3rd and by adopting the multiplier of 17, the amount will be Rs. 4,75,200/-. This amount shall be added in the provision for loss to estate at Rs. 2,000/- and funeral expenses at Rs. 2,500/- which will qualify for, therefore, an additional amount of Rs. 4,500/-. The aggregate shall be Rs. 4,79,700/-. The amount already awarded shall stand modified by the application of the provisions of Schedule II strictly and the additional compensation shall also attract interest @ 9% from the date of the petition till the date of payment.

The cross objection by the insurer that the claimants are not dependents is dismissed, for, legal heirs such as the brothers and sister in the absence of any other relatives are competent to maintain the petition and here the compensation is assessed for an accrual to an estate which will be inherited by the legal heirs. The dependancy must be seen in such a context as an euphemism for the loss that has occasioned by the premature death of the person under whom the claim is made as heirs at law.

The cross objection is dismissed.

(K.KANNAN)
JUDGE

05.04.2016
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