IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5368-2013 (O&M)
Date of decision: 08.04.2016

Rahisan and others

...Appellants

Versus

Arshad and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rohit Rana, Advocate for
Mr. Kunal Dawar, Advocate for the appellants.

Mr. Amrinder S. Sidhu, Advocate for respondent No.3.

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JITENDRA CHAUHAN, J.

CM No.22872-CII of 2013

The learned counsel for the appellants contends that the deficiency of the court fee has been made good.

In view of the grounds mentioned in the application, which is duly supported by an affidavit, the delay in making of the deficiency is condoned.

CM is disposed of.

Main Case

This is claimants' appeal seeking enhancement of the amount of compensation awarded vide impugned award dated 08.04.2013, passed by learned Motor Accidents Claims Tribunal, Faridabad, (for short, 'the Tribunal').

The learned counsel for the appellants contends that the learned Tribunal has erroneously made the deduction at 1/3rd as number of dependents are five. He further submits that the amount awarded under the conventional heads are on the lower side and deserves to be enhanced.

On the other hand, the learned counsel for respondent No.3 has vehemently opposed the present appeal and states that a just and reasonable compensation has already been awarded to the appellants.

I have heard the learned counsel for the parties and carefully perused the entire record.

From the perusal of the award, it is noticed that the learned Tribunal did not award any compensation on account of the future prospects. It is not in dispute that the deceased, Rafiq was 25 years of age at the time of his death. Therefore, keeping in view the law laid down in ***Rajesh Vs. Rajbir Singh, 2013(3) R.C.R. (Civil), 170 (SC)***, an addition of 50% is ordered in the actual income of the deceased towards future prospects.

Further, as per the law laid down in ***Sarla Verma v. DTC (2009) 6 SCC 121,*** deduction should be 1/4th instead of 1/3rd, as the number of dependents is five.

In this way, the amount of compensation under the head of 'loss of dependency' comes to Rs.4600/- + 50% X 12 X 18 X 3/4 = Rs.11,17,800/-, as against an amount of Rs.7,45,200/-, assessed by the learned Tribunal under this head.

Furthermore, nothing has been awarded towards loss of love and affection, therefore, following the law laid down in ***Vimal Kanwar and others Vs. Kishore Dan and others, (2013-3) PLR 776***, amount of Rs.1,00,000/- awarded towards loss of love and affection shall be payable to the children of the deceased, in equal shares.

As per the law laid down in ***Rajesh's case*** *(supra),* another amount of Rs.90,000/- towards loss of consortium awarded to the wife of the deceased, only and another amount of Rs.20,000/- awarded towards cremation and last rites.

In view of the above, the claimants are held entitled to the enhanced compensation of Rs.5,82,600/- [Rs.3,72,600/- (enhancement towards 'loss of dependency') + Rs.1,00,000/- (towards loss of love and affection payable to the children of the deceased, in equal shares) + Rs.20,000/- (enhancement towards cremation and last rites) + Rs.90,000/- (enhancement towards loss of consortium payable to the wife of the deceased, only)] as indicated above, in the manner prescribed in the impugned award, over and above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal, till its realization.

With the aforesaid modification in the impugned award, the present appeal is partly allowed.

08.04.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**