IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5 of 2014 (O&M)
Decided on: 31.08.2016

Satish Kumar and others

....Appellants

Versus

Pawan Kumar and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sunil Saharan, Advocate
for the appellants.

Mr. Ram Avtar, Advocate
for respondent No.3.

REKHA MITTAL, J.

CM No.06-CII of 2014

Prayer in this application is for condoning delay of 346 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Satish Kumar, the applicant-appellant and in absence of any challenge to correctness of the averments set up in the application, the application is allowed and delay of 346 days in filing the appeal stands condoned but subject to the condition that the applicants/appellants shall not claim interest for the period of delay, if the appeal is allowed.

MAIN CASE

The claimants are in appeal seeking enhancement of compensation in regard to death of Anju in a motor vehicular accident that took place on 28.05.2011.

The learned Tribunal assessed value of her services for managing household at Rs.5,000/- per month, deducted 1/3rd towards personal expenses, adopted a multiplier of 17 to compute loss of dependency to the tune of Rs.6,80,000/-. In addition, an amount of Rs.10,000/- for loss of consortium to the husband and Rs.5,000/- each for loss of estate and funeral expenses and Rs.50,000/- for medical expenses have been awarded making total compensation to the tune of Rs.7,50,000/- payable with interest @ 6% per annum from the date of filing of the petition till realization.

Counsel for the appellants has submitted that deduction to the extent of 1/3rd should not be allowed as income of the deceased has been assessed *qua* value of her services to the family. For this purpose, he has relied upon a Division Bench judgment of this Court ***"Paramjit Singh and another vs Dilbagh Singh @ Bagga and others",*** **2014(4) RCR (Civil) 895.** It is further argued that compensation under conventional heads needs re-look, addition and enhancement.

Counsel for the insurer, on the contrary, has submitted that Hon'ble the Apex Court in ***"Jitendra Khimshankar Trivedi and others vs Kasam Daud Kumbhar and others",*** **2015 ACJ 708**, has upheld assessment of income at Rs.3,000/- per month for value of services of a housewife with deduction to the extent of 1/3rd for personal expenses, therefore, assessment made by the Tribunal *qua* income is liable to be reduced. Further reference has been made to the Division Bench judgment of this Court ***Paramjit Singh and another's case (supra)*** to contend that the Division Bench has upheld income of the deceased, a housewife to the tune of Rs.3,000/- per month who died in an accident that took place in the year 2010.

I have heard counsel for the parties, perused the paperbook particularly the award passed by the learned Tribunal.

Anju, the deceased died at a young age of less than 30 years leaving behind two minor children Sagar Kumar aged 08 years and Muskan 6½ years besides her husband. The accident in question took place on 28.05.2011 and Anju died on 02.06.2011. The learned Tribunal has assessed value of services of the deceased at Rs.5,000/- per month. In ***Jitendra Khimshankar Trivedi and others case (supra)*** no appeal was preferred by the claimants to challenge assessment either *qua* value of services of the deceased or deduction towards personal expenses. The accident in the said case occurred on 21.09.1990. No such issue was raised nor the Court otherwise examined correctness of assessment or deduction towards personal expenses. Under these circumstances, the mere fact that Hon'ble the Apex Court affirmed the award of the Tribunal with regard to assessment of income and deduction is not sufficient to say that any such ratio was laid down by the Apex Court that deduction from value of services of a housewife is admissible. However, the Division Bench of this Court in ***Paramjit Singh and another's case (supra)*** has specifically dealt with the issue as to whether in case of assessment of notional income of a housewife, 1/3rd amount is to be deducted to arrive at the figure of dependency and the said issue has been answered with the findings that no such deduction is permissible. In the given facts and circumstances, I find myself unable to accept the submissions made by counsel for the insurance company that either income of the deceased assessed by the Tribunal is liable to be reduced or 1/3rd deduction towards personal expenses can be upheld. As a result, findings of the Tribunal allowing deduction to the extent of 1/3rd towards personal expenses cannot be allowed to sustain and accordingly set-aside. Loss of dependency, in view of the aforesaid discussion, comes to ***Rs.10,20,000/-*** (Rs.5,000/- x 12 x 17).

Satish Kumar, husband of the deceased is allowed an amount of ***Rs.1,00,000/-*** for loss of consortium; the children of the deceased shall be entitled to an amount of ***Rs.1,50,000/-*** in equal share for loss of love and affection; the claimants shall be entitled to an amount of ***Rs.25,000/-*** for expenses on funeral. The total compensation payable to the claimants comes to ***Rs.12,95,000/-*** and the enhanced compensation comes to ***Rs.5,45,000/-*** (Rs.12,95,000/- – Rs.7,50,000/-). The compensation awarded by the Tribunal as well as enhanced compensation shall be payable with interest @ 7.5% per annum from the date of filing of the petition till realization except that the insurance company shall not be liable to pay interest for a period of 346 days pertaining to delay in filing the appeal.

The enhanced compensation shall be payable to children of the deceased in equal share and deposited in the shape of FDR in a nationalized bank for a period of two years or till they attain the age of majority whichever is later. The claimants shall not be entitled to raise any loan against the fixed deposit receipts. The interest accrued on the FDR(s) shall be payable to father of the minor children for meeting expenses on their education and living.

The appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
31.08.2016 **JUDGE**
yakub

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No