IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5707 of 2013
Date of Decision : 12.08.2016

Manjit Kaur and others ....Appellants

Versus

Surinder Kumar and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.C. Gupta, Advocate
for the appellants.

Mr. Rajbir Singh, Advocate
for respondent no. 3-Insurance Company.

Mr. Bhavyadeep Walia, Advocate
for respondent no. 4.

Surinder Gupta, J.

This is appeal by claimants seeking enhancement of compensation allowed by the Motor Accident Claims Tribunal, Patiala (later referred to as 'the Tribunal) for death of Harpal Singh, husband of claimant-appellant no. 1, father of claimants-appellants no. 2 and 3 and son of claimant-appellant no. 4 on 04.02.2009, in a motor vehicle accident with Swaraj Mazda vehicle bearing No. HR-01-A-3890 (later referred to as 'the offending vehicle').

2. As claimants-appellants are seeking enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. The Tribunal awarded compensation of ₹33,50,200/-to claimants, which was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Harpal Singh
(ii)	Age of the deceased	39 years
(iii)	Income of the deceased	₹20642 per month
(iv)	30% of (iii) added in income of the deceased towards future prospects	(₹20642+₹6192)= ₹26834 per month
(v)	1/3rd of (iv) deducted towards personal expenses	(₹26834-₹8945)= ₹17889 (rounded off to ₹17890)
(vi)	Amount of dependency after applying the multiplier of 15	(₹17890x12x15)= ₹3220200
(vii)	Loss of consortium	₹100000
(viii)	Loss of estate	₹5000
(ix)	Funeral expenses	₹25000
Total		**₹3350200**

4. Learned counsel for the appellants has argued that the deceased was 39 years 10 months of age and was below 40 years, as such, claimants are entitled to 50% addition in income of the deceased as per observations of Apex Court in cases of ***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54*** and ***Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447***. The Tribunal has committed error while reducing this addition to 30%. He has further submitted that father of the deceased, aged 75 years, was also dependant on the deceased and this makes the number of dependants as four consequently attracting 1/4th deduction from his income towards personal expenses instead of 1/3rd as applied by the Tribunal. For loss of estate to father, the Tribunal has allowed compensation of ₹5000/- and no compensation was allowed to minor daughter and son of the deceased towards loss of love and affection care and guidance.

5. Learned counsel for respondent no. 3-Insurance Company has argued that the deceased was 39 years 10 months of age and the Tribunal has rightly considered him as 40 years of age while applying addition in income of the deceased as 30%. There was no evidence on record that father was also dependant on the deceased. The Tribunal has rightly allowed compensation of ₹5000/- towards loss of estate keeping in view age of father of deceased. Amount of compensation allowed by the Tribunal is just and reasonable and calls for no further enhancement.

6. While laying down the parameters of addition in income of the deceased, who is permanent employee, Apex Court in case of ***Sarla Verma and ors.*** ***vs.*** ***Delhi Transport Corporation and another***, ***(2009) 6 SCC 121***, has observed that 50% addition in actual salary is to be made in case the deceased is below 40 years. It was also so approved in case of ***Reshma Kumari and ors.*** ***vs.*** ***Madan Mohan and anr.***, ***2013 (9) SCC 65***. The deceased in this case was below 40 years of age, as such, claimants are entitled to 50% addition in income of the deceased. Tribunal took income of the deceased as ₹20642/- per month. The Tribunal after making 30% addition in income to the deceased took the same as ₹26,834/- per month. Incident took place in the year 2009. In the year 2009, income above ₹1,60,000/- was taxable. Total income of the deceased, who was getting ₹20,642/- per month as salary, comes to ₹2,47,704/- per annum. He fell in the tax slab of 10% of income above ₹1,60,000/-, as such, annual income tax works out to be ₹24770/-. The Tribunal has committed error by not making deduction towards income tax. After making deduction towards income tax, annual income of the deceased works out to be (₹247704-24770)= ₹2,22,934/-. On making 50% addition in income of the deceased,

annual income of the deceased works out to be (₹2,22,934+₹1,11,467)= ₹334401/-.

7. However, there is no evidence that despite his old age father was dependant solely on the deceased. Father of the deceased is entitled to compensation on account of loss of estate, which is quantified as ₹1 lac. The Tribunal has rightly applied deduction of 1/3rd towards personal expenses of the deceased. Children of the deceased are also entitled to ₹1 lac towards loss of love and affection care and guidance.

8. In view of my above discussion, compensation to which claimants are entitled is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Annual income of deceased Harpal Singh after deducting income tax	(₹247704-24770)= ₹222934
(ii)	50% of (i) above to be added as future prospects	(₹222934+₹111467)= ₹334401 (rounded off to ₹334400 per annum
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	₹334400- ₹111500) = ₹222900 per annum
(iv)	Compensation after multiplier of 15 is applied	(₹222900X15) = ₹3343500
(v)	Loss of consortium for the wife	₹100000
(vi)	Loss of love and affection care and guidance for children	₹100000
(vii)	Loss of estate for father	₹100000
(viii)	Funeral expenses	₹25000
	Total	₹3668500

9. As a sequel of my above discussion, the appeal is accepted. Award of the Tribunal is modified and compensation allowed to claimants is enhanced from ₹33,50,200/- to ₹36,68,500/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing

of claim petition till actual realization. Respondent no. 3 being insurer of the offending vehicle will deposit the share of claimants-appellants in their bank accounts or pay the same through demand drafts.

August 12, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*