IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5957-2013 (O&M)
Date of decision: 16.05.2016

Mewa Rani and others ...Appellants

Versus

Harjinder Singh @ Billu Vakil and another ...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gopal Sharma, Advocate for the appellants.

Mr. Sutikshan Sharma, Advocate for respondent No.1

Mr. M. B. Jain, Advocate for respondent No.2.

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JITENDRA CHAUHAN, J.

This is claimants' appeal seeking enhancement of the amount of compensation awarded vide impugned award dated 01.06.2013, passed by learned Motor Accidents Claims Tribunal, Ambala, (for short, 'the Tribunal').

The arguments raised by the learned counsel for the appellants are that (1) less amount is awarded by the learned Tribunal towards loss of consortium; (2) nothing has been awarded towards loss of love and affection, which is contrary to the law laid down in ***Vimal Kanwar and others Vs. Kishore Dan and others,*** (2013-3) PLR 776; (3) nothing has been awarded towards future prospects; and (4) the learned Tribunal has ignored the testimony of PW6-Vikas Trehan, who specifically stated that the deceased was working in his firm and had been drawing a salary of ₹8500/- per month.

On the other hand, the learned counsel for the respondents have vehemently opposed the present appeal and stated 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.

As far as the first contention of learned counsel referring to the less income of the deceased, is concerned, it is to be noticed that neither the appointment letter has come on record nor any other supporting evidence like the attendance register or ledger book since 2004 were produced on record on behalf of the appellants on the basis of which it can be conclusively said that the deceased was employed with the AMCO Industries and Export Corporation, Ambala Cantt. The Income Tax Return which pertains to the post death period cannot be considered. It appears that an effort has been made by the claimants to show that deceased was employed in the said corporation, however, the same has rightly been declined by the learned Tribunal. Therefore, the learned Tribunal has correctly assessed the income of the deceased.

However, 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, Balkar Singh was 35 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 on the actual income of the deceased towards future prospects. As the matter pertaining the future prospects is pending adjudication before Hon'ble the Supreme Court in SLP (Civil) No.16735 of 2014, therefore, the amount of future prospects be released on furnishing of indemnity bonds by the appellants.

Claimants are five in number in the claim petition filed on behalf of the widow of the deceased, Balkar Singh, two minor children along with parents of the deceased. However, the father cannot be said to be dependent on the income of the deceased, therefore, for the purpose of deciding the dependency, the number of dependents shall be taken as four. The Tribunal has applied the deduction to the extent of 1/3rd which, in view of judgment delivered by Hon'ble the Supreme Court in ***Sarla Verma v. DTC*** *(2009) 6 SCC 121*, ought to have been 1/4th.

In this way, the amount of compensation under the head of 'loss of dependency' comes to ₹5,000/- + 50% X 12 X 16 X 3/4 = ₹10,80,000/-, as against an amount of ₹6,40,000/-, 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's case (supra), an amount of ₹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 ₹90,000/- towards loss of consortium is awarded to the wife of the deceased, only.

In view of the above, the claimants are held entitled to the enhanced compensation of ₹6,30,000/- [₹4,40,000/- (enhancement towards 'loss of dependency') + ₹1,00,000/- (towards loss of love and affection payable to the children of the deceased, only in equal shares) + ₹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.

16.05.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**