IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 4741 of 2015 (O&M)
Date of decision: 08.11.2016

Rajender Singh and another .... *Appellants*

Versus

Deepak and another ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Vikram Singh, Advocate
for the appellants

Mr. Suvir Dewan, Advocate
for respondent No. 2

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Rekha Mittal, J. (oral)

The claimants are in appeal seeking enhancement of compensation in regard to death of Soni son of Rajender Singh in a motor vehicular accident that took place on 10.12.2013.

The Tribunal assessed income of the deceased at Rs.8,000.00 per month, deducted $1/3^{rd}$ for personal expenses and applied multiplier of 11 to compute loss of dependency at Rs.7,03,956.00. In addition, an amount of Rs.1,00,000.00 for loss of love and affection and Rs.25,000.00 for funeral expenses has been awarded making total compensation of Rs.8,28,956.00. However, 50% of the amount has been deducted by attributing contributory negligence to the deceased as three persons namely Soni, Sachin and Vijay Pal were riding on the motor cycle at the time of occurrence.

Counsel for the appellants has submitted that the findings of the learned Tribunal in regard to contributory negligence of the deceased are liable to be set aside as the offending vehicle Bolero Pick Up bearing No. HR 67-A-7150 was driven by Deepak-respondent No. 1 in a rash and negligent manner which came from behind and struck against the motor cycle, on which the deceased was travelling as a pillion rider. It is further argued that travelling of three persons on a motor cycle may be a traffic offence but itself is not sufficient to attribute contributory negligence to the driver or pillion riders. In support of his contention, he has relied upon judgments of this Court ***Karnail Singh vs. Balwinder Singh, 2014(7) R.C.R. (Civil) 177 and IFFICO Tokio General Insuyrance Company Limited v. Akbari and others 2015 (2) R.C.R. (Civil) 480.***

With regard to quantum of compensation, counsel has submitted that the Tribunal has not allowed benefit of future prospects to the extent of 50%. The admissible multiplier would be 18 in the light of judgments of Hon'ble the Supreme Court of India ***Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121*** and ***Munna Lal Jain and another v. Vipin Kumar Sharma and others (2015) 6 SCC 347.*** Compensation awarded under conventional heads also needs enhancement.

Counsel for the Insurance Company, on the contrary, has supported the award with regard to findings qua contributory negligence as well as multiplier of 11 keeping in view age of the parents. However, it is submitted that the Tribunal has wrongly allowed deduction to the extent of 1/3rd in place of 50%, admissible in the circumstances.

I have heard counsel for the parties and perused the paper book particularly the award.

The Tribunal in para 20 of the award has noted the submissions made by counsel for the insurance Company with regard to contributory negligence and concluded in para 21 that as three persons were riding on a motorcycle whereas the motor cycle is meant for riding of two persons, the claimants are entitled to 50% amount of Rs.8,28,956/- i.e. Rs.4,14,478.00. It has nowhere been held by the Tribunal that riding of three persons on a motor cycle has in any manner, contributed to causing of accident particularly under the circumstances that the offending vehicle came from behind and hit the motor cycle driven by Vijay Pal on which the deceased was a pillion rider. When the facts and circumstances of the present case are examined in the light of judgment of this Court ***IFFCO Tokio General Insurance company Limited's case (supra),*** I have no hesitation to hold that findings of the Tribunal deducting 50% amount of compensation in view of observations recorded in para 21 of the award cannot be allowed to sustain and accordingly set aside.

This brings the Court to quantum of compensation. The Tribunal has not allowed benefit of increase in income for future prospectus. The claimants are entitled to this benefit to the extent of 50% in the light of judgment of Hon'ble the Supreme Court in ***Rajesh and others v. Rajbir Singh and others (2013) 9 SCC 54***.

The Tribunal has allowed deduction to the extent of 1/3rd for personal and living expenses of the deceased. Counsel for the claimants has failed to point out any special circumstances obtaining in the case, justifying deviation from the observations made by Hon'ble the Supreme Court in Sarla Verma's case (supra) wherein it has been laid down as a matter of principle that in case the deceased happens to be an unmarried person and the claimants are the parents, deduction would be 50%. The Tribunal has wrongly applied multiplier of 11 and the same would be 18 as the deceased was less than 25 years of age. Accordingly, loss of dependency would be assessed after allowing deduction to the extent of 50% and the same is calculated at Rs.6,000.00x12x18=**Rs.12,96,000.00.**

The compensation awarded by the Tribunal to the extent of Rs.1,00,000.00 for loss of love and affection and Rs.25,000.00 towards funeral expenses is affirmed. The claimants shall be entitled to another sum of Rs.25,000.00 for loss of estate. The total compensation comes to Rs.14,46,000.00 and enhanced compensation is Rs.10,31,522.00 (Rs.14,46,000.00-Rs.4,14,478.00), payable with interest @ 7.5% per annum from the date of petition till realization. The enhanced compensation shall be playable exclusively to mother of the deceased, to be deposited in a fixed deposit receipt in a nationalized Bank for a period of two years.

Allowed in the aforesaid terms.

(Rekha Mittal)
Judge

08.11.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No