In the High Court of Punjab and Haryana at Chandigarh

FAO No. 7480 of 2014(O&M)
Date of Decision: 9.12.2016

Kiranwati and others

---Appellants

versus

Jagdish Dhakaria and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikram Singh, Advocate
for Mr. Ashok Kaushik, Advocate
for the appellants
Mr. Harsh Manocha, Advocate
for Mr. Ajay Pal Singh, Advocate
for respondent No. 2
Mr. Om Pal Sharma, Advocate
for respondent No. 3
for Mr. R.K.Bashamboo, Advocate
for respondent No. 5

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<u>Rekha Mittal, J.</u>

The claimants are in appeal seeking enhancement of compensation in regard to death of Subhash in a motor vehicular accident that took place on 20.10.2007.

The Motor Accidents Claims Tribunal, Palwal (in short "the Tribunal") assessed income of the deceased at Rs. 3500/- per month, deducted 1/5th for personal expenses, applied a multiplier of 16 to compute loss of dependency at Rs. 5,37,600/-. In addition, an amount of Rs. 15,000/- for transportation and funeral expenses, Rs. 10,000/- each for loss of estate and loss of consortium was awarded making total compensation to Rs. 5,72,600/- payable by respondent Nos. 1 to 3 therein but respondent No. 3-insurance company of truck bearing No. MH-31-CB/5706 has been given recovery rights against registered owner of the vehicle, respondent No. 2 therein.

Counsel for the appellants has submitted that Subhash was driving truck bearing No. HR-38-N/6985 at the relevant time when the accident in question took place due to rash and negligent driving of truck No. MH-31-CB/5706, sufficient to prove that Subhash was a driver of a heavy goods vehicle. It is argued that income of the deceased is liable to be enhanced by taking into consideration his profession/avocation. The claimants are entitled to benefit of increase in income for future prospects to the extent of 50%. Compensation awarded under conventional heads needs enhancement.

Counsel representing the insurance company has refuted arguments advanced by counsel for the appellants with the submission that matter with regard to grant of future prospects is pending consideration before a Larger Bench in view of reference made in ***National Insurance Company Limited vs. Pushpa and others*** in a petition for Special Leave to Appeal (Civil)-8058 of 2014.

I have heard counsel for the parties, perused the paper book particularly the award passed by the Tribunal.

It is undisputed position of the case that Subhash was driving truck No. HR-38-N/6985 at the time when the occurrence in question took place resulting in serious injuries to Subhash that proved fatal. Taking into consideration the minimum wage of a skilled worker fixed by the State of Haryana and available at the relevant time, income of the deceased is assessed at Rs. 4000/- per month. There is no merit in contention of the respondents that benefit of future prospects may be denied to the claimants either because Subhash was not in permanent employment or the matter is pending before a Larger Bench till the judgment in ***Rajesh and others vs.***

Rajbir Singh and others 2013 (3) RCR (Civil) 170 holds the field. The Tribunal has allowed deduction to the extent of 1/5th by taking into consideration that there are seven claimants namely the widow, five children and father of the deceased. Counsel for the claimants has failed to point out any materials to show that father of the deceased was dependent on his earnings. That being so, as there are six claimants dependent upon earning of the deceased, admissible deduction would be 1/4th in place of 1/5th. In view of the above, loss of dependency comes to Rs. 4000 x 12x 16= Rs.7,68,000/- +3,84,000 = Rs.11,52,000 – 2,88,000 (1/4th)= Rs.8,64,000/-.

Under conventional herds, an amount of Rs. 1,00,000/- for loss of consortium to the widow, Rs. 3.75 lakhs in equal share to children of the deceased for loss of love and affection, Rs. 25,000/- each for expense on funeral and loss of estate is awarded. In this manner, total compensation comes to Rs. 13,89,000/- and the additional amount is Rs. 8,16,400/-, payable with interest @ 7.5.% per annum from the date of petition till realization to the claimants in equal share. The amount falling to share of the minor(s) shall be deposited in a fixed deposit receipt for a period of three years of till they attain the age of majority whichever is later.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

9.12.2016
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No