IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC-223-CII-2015 in/and
FAO No.2348 of 2000 (O&M)

Date of decision: 20.09.2017

Rajasthan State Road Transport Corporation

...Applicant/Appellant

Versus

Pushpa Devi and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. A.K. Gehlawat, Advocate
for the appellant.

Mr. J.S. Yadav, Advocate
for respondents No.1 to 4/cross-objectors.

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REKHA MITTAL, J. (Oral)

CM-14587-2000

Heard.

For the reasons stated in the application and arguments advanced by counsel for the parties, same is allowed. Delay of 205 days in re-filing the appeal is condoned.

Main Case

This order will dispose of FAO No.2348 of 2000 and Cross objections No.223-CII-2015 as these have emerged out of the same award dated 02.08.1999 passed by the Motor Accidents Claims Tribunal, Rewari whereby compensation has been awarded in regard to death of Radhey Shyam in a motor vehicular accident that took place on 04.01.1997.

The Tribunal assessed income of the deceased at Rs.2100/- per month, deducted 1/3rd for personal expenses and applied multiplier of 17 to compute loss of dependency at Rs.2,85,600/-. In addition, a sum of Rs.10,000/- towards expenses on cremation/transportation, Rs.10,000/- for loss of consortium has been awarded making total compensation to Rs.3,05,600/- payable with interest @12% per annum from the date of petition till realization.

FAO No.2348 of 2000 has been filed by the Rajasthan State Road Transport Corporation (hereinafter to be referred as 'the Corporation') and General Manager of the Corporation whereas the cross objections have been preferred by claimants seeking enhancement of compensation.

Counsel representing the Corporation has assailed quantum of compensation primarily on the ground that the Tribunal has wrongly assessed income of the deceased at Rs.2100/- per month but the minimum wage of a skilled worker at that time was less than Rs.2100/- per month.

Counsel representing the claimants, on the other hand, has submitted that income assessed by the Tribunal is liable to be enhanced on the basis of materials on record as per deposition of Smt. Pushpa Devi (PW2) widow of the deceased and Hoshiar Singh PW3. It is further argued that the deceased was driver of car bearing No.DEC-1546 of Hoshiar Singh at a salary of Rs.3,000/- per month and he was earning by cultivation of land as well. Another submission made by counsel is that application for compensation was filed by the widow, two minor children and mother of the deceased, held entitled to get compensation, therefore, admissible deduction for personal expenses is 1/4th. Compensation awarded by the Tribunal under conventional heads needs enhancement.

The plea of the claimants is that the deceased was earning Rs.5,000/- per month from his job as a driver at car No.DEC-1546 of Hoshiar Singh and cultivation of land. The widow of the deceased has not made it clear as to whose land was being cultivated by deceased Radhey Shyam. Her testimony with regard to cultivation of land by Radhey Shyam does not get support from an independent source much less documentary evidence. The Tribunal has rightly denied plea of the claimants that the deceased was cultivating land and getting income therefrom.

Hoshiar Singh PW3 was examined to prove that the deceased was working as a driver of car bearing No.DEC-1546 of Hoshiar Singh. It is not denied that Radhey Shyam was driving the said car when the unfortunate occurrence took place. Testimony of Hoshiar Singh that he was paying salary of Rs.3000/- per month to Radhey Shyam, does not find corroboration from any documentary evidence. It is also not clear on record as to what was the financial status of Hoshiar Singh to pay salary of Rs.3000/- per month to a driver in the year 1997. Under the circumstances, income of the deceased is liable to be assessed on the basis of minimum wage available to a skilled worker at the relevant time. Accordingly, income of the deceased is assessed at Rs.2000/- per month.

The deceased was 25 years of age at the time of death and left behind family consisting of his widow, two minor sons and mother. The claimants are allowed benefit of increase in income for future prospects to the extent of 50%. The mere fact that a reference is pending consideration before a larger bench of Hon'ble the Supreme Court in view of reference made in **National Insurance Company Ltd. Vs. Pushpa,** (SLP (c) No.16735 of 2014 is not sufficient to deny the benefit of future prospects.

The application for compensation was filed by the widow, two minor children and mother of the deceased, held to be dependent on his earning. That being so, admissible deduction for personal expenses would be 1/4th. As the deceased was 25 years old, appropriate multiplier would be 18. In this manner, loss of dependency comes to Rs.3000 (Rs.2000 + 50% thereof towards future prospects) x 12 x 18 – (¼ for personal expenses) = Rs.4,86,000/-. Compensation awarded by the Tribunal for expenses on transportation and cremation to the tune of Rs.10,000/- is affirmed. In addition, the claimants shall be entitled to following compensation:-

1	Loss of love and affection, care and guidance to the minor children	Rs.60,000/-
2	Love and affection to the mother	Rs.25,000/-
3	Loss of estate	Rs.10,000/-
4	Loss of consortium to the widow	Rs.25,000/-
	Total	Rs.1,20,000/-

In this manner, total compensation comes to Rs.6,16,000/- and the additional amount is Rs.3,10,400/- (6,16,000 – 3,05,600) which shall carry interest @ 7.5% per annum from the date of filing cross objections till realization, to be paid to widow of the deceased except the amount of loss of love and affection payable to the children and mother of the deceased.

The appeal and cross-objections stand disposed of in the abovesaid terms.

20.09.2017 **(REKHA MITTAL)**
ashok **JUDGE**

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