IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2726 of 2005
Date of Decision.01.12.2017

Satish Kumar ....Appellant

Vs

Ram Swroop and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Mittal, Advocate
for the appellant.

Mr. Rajneesh Malhotra, Advocate
for the insurance company.

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AMIT RAWAL J.(ORAL)

Mr. Sanjay Mittal, learned counsel appearing on behalf of the appellants before addressing the arguments on merits of the case submits that the Tribunal has awarded a compensation by fastening liability to the extent of 50:50 between the driver/owner of the truck bearing registration No.HYF-8495 and driver, owner and insurance company of the car bearing registration No.DL-1Z/1219. Since respondent Nos.1 and 2 are not served, he does not press the appeal against the aforementioned respondents. Accordingly, the appeal against respondent Nos.1 and 2 stands dismissed.

As regards the enhancement of compensation *viz-a-viz* 50% liability fastened upon the insurer of the car, he submits that in the accident occurred on 21.08.2002, one Santosh Devi aged 26 years, who was also 24 weeks pregnant, died. The Tribunal took her income as ₹2100/- per month and after deducting 1/3rd of the same towards personal expenses, applied the multiplier of 14 instead of 17 and for unborn child awarded a sum of ₹50,000/-, in total awarded a compensation of ₹2,85,000/-. However, for an unborn child of having equivalent pregnancy, a compensation of ₹1,80,000/- has been awarded by the Hon'ble Supreme Court in ***National Insurnace Company Ltd. Vs. Kusuma and another 2011(4) RCR (Civil) 180***. Even income of the deceased was to be taken as ₹3000/- per month instead of ₹2100/-.

On the contrary, Mr. Rajneesh Malhotra, learned counsel appearing on behalf of the insurance company submits that the compensation arrived at is legal and just and cannot be enhanced, except the multiplier in view of the ratio decidendi culled out by Hon'ble Supreme Court in ***Sarla Verma Vs. DTC 2009(6) SCC 121.***

I have heard learned counsel for the parties, appraised the paper book and of the view that without tinkering with the income of the deceased as well as reduction, only multiplier of 17 is required to be applied instead of 14. Therefore, I will take the income of the deceased as ₹2100/- per month, apply a deduction of 1/3rd and adopt a multiplier of 17 to assess the loss of dependency as ₹2,85,600/-. I will further add to it ₹40,000/- for loss of consortium and ₹15,000/- each for loss of estate and funeral expenses. In all, the compensation payable for death of deceased-Santosh shall be ₹3,55,600/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization.

In paragraph 8 and 13 of the judgment in ***Kusuma***'s case (supra), with regard to death of an unborn child in the womb of a woman who had 30 weeks pregnancy, the Hon'ble Supreme Court upheld the compensation of ₹1,80,000/- given by the High Court.

In the instant case as well, the deceased-Santosh was having pregnancy of 24 weeks, which is revealed from the post-mortem report. In view of the aforementioned fact, the amount of compensation is enhanced from ₹50,000/- to ₹1,80,000/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. The liability to pay the compensation by the insurer of the car shall be to the extent of 50% only.

The award passed by the Tribunal is modified to the above extent and the appeal stands allowed in part.

(AMIT RAWAL)
JUDGE

December 01, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No