IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3446-2007 (O&M)
Date of decision: 01.12.2017

Shri Kant and another .... Appellants

Versus

Sonam Bakshi and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Ashish Gupta, Advocate
for the appellants.

Mr.Subhash Goyal, Advocate
for respondent No.3.

***

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 17.03.2007 passed by Motor Accidents Claims Tribunal, Rohtak (hereinafter referred to as the 'Tribunal').

This case was a burnt case and the record has been reconstructed from the salvaged record and the copies supplied by the counsel subject to just exceptions.

The appellants are the unfortunate children who lost their parents on an ill-fated day i.e. 16.01.2005 in a motor vehicular accident. Anil Kumar and Sadur Bala were travelling in a car bearing registration No.HR-12G/2401. The said car was being driven rashly and negligently by the driver. As a result of which, the front wheel of the car got bursted. Due to fast speed, the car hit against the mile stone of the road. Consequently, the car turned turtle. Both

Anil Kumar and Sadur Bala suffered injuries. They were taken to hospital but they were declared dead. The matter was registered at Police Station Sojat.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the son and daughter of the deceased for claiming compensation for death of their parents.

The Tribunal after appreciating the facts and considering the evidence, awarded a sum of Rs.7,28,000/- along with interest @ 7.5% per annum. The said amount includes Rs.2 lakhs awarded under the conventional heads.

I have heard the learned counsel for the parties and have perused the paperbook.

Learned counsel for the appellants has argued that Sadur Bala was working as Deputy Superintendent in the office of DDPO and her salary was proved on record vide Ex.P6 as Rs.14680/- per month. He contends that the Tribunal has wrongly taken her salary as Rs.10,000/-. He further contends that no future prospects have been awarded by the Tribunal and loss of dependency should have been calculated as per ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77.***

It was claimed that the deceased Anil Kumar was earning Rs.12,000/- per month by way of Ex.P5. His last pay certificate from 01.08.2004 to 31.12.2004 was attached which showed his salary as Rs.10,000/- per month. He contends that the Tribunal has wrongly taken his salary as Rs.8500/- per month. He further contends that no future prospects have been awarded by the Tribunal and loss of dependency should be calculated as per ***Sarla Verma's case (supra)***.

Learned counsel for the appellants further contends that the injured were shifted to hospital, therefore, the Tribunal erred in not awarding any amount for transportation. He further contends that the accident took place in Rajasthan and the bodies were brought back to Haryana this issue has also not been considered by the Tribunal.

Learned counsel for the Insurance Company, on the other hand, contends that the salary of Sadur Bala though have been proved but income tax has to be deducted while considering the salary. He further contends that the Tribunal erred in taking the age of the deceased as 50 years whereas they were 57 and 58 years as per the claim petition itself. He further relies upon the information received under the RTI, which has been placed on record as per the direction of the Court. According to which, the date of birth of Sadur Bala was 29.12.1947 and she was 57 years at time of accident. He contends that according to this information, the age given in the claim petition as 57 years of Sadur Bala and 58 years of Anil Kumar is correct. He further contends that the amount awarded under the conventional is on the higher side and contrary to the decision of the Hon'ble Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors. in SLP (Civil) No.25590 of 2014 decided on 31.10.2017***.

He further contends that the income of the deceased Anil Kumar was claimed as Rs.10,000/- whereas it was not proved on record that he was earning Rs.10,000/- per month. He defended the award of the Tribunal in which the income of the deceased Anil Kumar is assessed at Rs.8500/-per month. He could not raise any serious objection with regard to the calculation of loss of dependency as per the decision of ***Sarla Verma's case (supra).***

Since just and equitable compensation has to be arrived at by the Court under the Act, hence, while recalculating the compensation, the amount awarded under the conventional heads will have to be reconsidered in view of the latest law laid down by the Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra)***

The contention raised by learned counsel for the appellants that the Tribunal erred in taking the salary of Sadur Bala as Rs.10,000/- deserves acceptance. It has been proved on record that she was a government employee, aged 57 years and was earning Rs,14,680/- per month. The only deduction which is required to be made from the salary is of the income tax. Since no details of the salary are there, the income tax will have to be worked out on rough estimation. The annual salary comes to Rs.1,76,160/-, the same is rounded up to Rs,1,76,000/-.

Nil slab, during the relevant year of income tax was 0-50,000. Since the details of savings made are not available, both the parties agreed that the amount of Rs.8,000/- be deducted for income tax on approximate basis.

The loss of dependency is recalculated applying the multiplier method and after making deduction for self expenses as per the decision of the Hon'ble Apex Court in ***Sarla Verma's case (supra).*** Future prospects would be added of 15% in accordance with the decision of the Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra).***

The contention raised by learned counsel for the appellants that the Tribunal erred in assessing the monthly salary of the deceased Anil Kumar as Rs.8500/- has no merits and has to be rejected. Mere a salary certificate was produced before the Tribunal which was proved on record. Nobody deposed in support of the said salary certificate. In such circumstances, there have to be some guess work to arrive at the salary being received by the deceased. The future prospects should have been awarded deserves acceptance as at least it was not doubted that he was on a fixed salary and according to the decision of the Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra)***, 10% future prospects are awarded while calculating the loss of dependency. The loss of dependency is recalculated by adding the future prospects, applying multiplier and making deductions for self expenses as per the decision of the Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra)*** and ***Sarla Verma's case (supra).***

The contention of learned counsel for Insurance Company with regard to the age of deceased was not seriously objected by learned counsel for the appellants and hence the multiplier would be applied taking the age of Sadur Bala as 57 years and Anil Kumar as 58 years.

The contention of learned counsel for the appellants that over and above the conventional heads, the transportation charges should be awarded is liable to be rejected on two grounds. Firstly, nothing has been proved on record that there was some actual expenses incurred with regard to the transportation of injured from the site of the accident to the hospital and thereafter from Rajasthan to Haryana.

Secondly, the Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra)*** has limited the conventional heads to Rs.70,000/- in which Rs.15,000/- has been awarded for funeral expenses. These expenses would include the transportation of body also. The case would have been different if a specific prove had come on record that some more or actual expenses were incurred for transportation of the body. The calculations of compensation are being separately made as under :

1. Sadur Bala

Annual income	Rs.1,76,000/-
Income tax deduction of Rs.8,000/-	Rs.1,76,000-8,000=Rs.1,68,000/-
Add 15% future prospects	Rs.25,200/-
Total income	Rs.1,93,200/-
Deducting 1/3rd personal expenses	Rs.64,400/-
Dependency	Rs.1,28,800/-
Applying multiplier of 9	Rs.11,59,200/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Total	Rs.11,89,200/-

2. Anil Kumar :

Monthly income	*Rs.8500/-*
Add 10% future prospects	Rs.850/-
Total income	Rs.8500+850=Rs.9350/-
Annual income	Rs.9350x12=Rs.1,12,200/-
Deducting 1/3rd personal expenses	Rs.37,400/-
Dependency	Rs.74,800/-
Applying multiplier of 9	Rs.6,73,200/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Total	Rs.7,03,200/-

The award dated 17.03.2007 is modified to the extent that the amount awarded by the Tribunal of Rs.7,28,000/- is enhanced to Rs.18,92,400/-.

The claimants would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

01.12.2017
anju

1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes