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

FAO No.4921 of 2007
Date of Decision.02.08.2017

Smt. Ram Kaur and another ....Appellants

Vs

Jagbir Singh and others ....Respondents

Present: Mr. Sanjeev Sharma, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal is for enhancement of compensation for death of one Raj Pal, aged 26 years, who died in a motor vehicular accident occurred on 25.4.2006. The claimants are parents. On the ill-fated day, the deceased was going from Sector 6, Panchkula to Ramgarh on his scooter bearing registration No.HR-03F-5025 and when he reached near bus stand of village Madanpur, a truck bearing registration No.HR-38D-9499, being driven by respondent No.1 rashly and negligently, struck against the scooter of the deceased, resulting into injuries which proved fatal. In this regard, FIR bearing No.60 dated 25.4.2006 under Section 279 and 304-A IPC was registered against respondent No.1 in Police Station, Chandimandir.

The deceased was stated to be running a milk dairy under the name and style of M/s Saini Dairy Products and Suppliers and earning ₹15,000/- per month. However, the Tribunal while assessing the compensation, took the income of the deceased as ₹6000/- per month, made a deduction of ₹2500/- per month towards personal expenses and applied the multiplier of 13 on the basis of age of the person older amongst the claimants and deceased. In total, awarded a compensation of ₹3,92,000/- with interest @6% from the date of filing of the claim petition till its realization, including ₹2000/- towards funeral expenses.

Mr. Sharma, learned counsel appearing on behalf of the appellants submits that the Tribunal has committed illegality and perversity in taking the income of the deceased as ₹6000/- per month. It failed to take into consideration the evidence brought on record with regard to income of the deceased. The claimants examined PW-1 to PW-7, who spoke about the avocation of the deceased that he was engaged in the milk selling business and earning ₹15,000/- per month. PW-10, Sham Lal Clerk of the Panchkula Central Cooperative Bank Ltd. proved the certified copy of the statement of account of the deceased as Ex.P2, according to which the deceased was running two accounts i.e. MMC No.839 and 2142. In MMC No.839, the deceased deposited ₹50,000/- on 02.11.2004 and used to do small savings frequently, however, in MMC No.2142, the deceased was crediting ₹10,000/- almost every month. For a person whose saving was about ₹10,000/- to ₹12,000/- every month, it can be predicted that he was earning much more than the amount of his savings of every month.

He further submits that the Tribunal has wrongly taken the age of the older parent to determine the multiplier, whereas it should have been the age of the deceased. In support of his contention, he relies upon the judgment of Hon'ble Supreme Court in ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(6) SCC 347; Reshma Kumari and others Vs. Madan Mohan and another 2013(9) SCC 65*** and judgment of Allahabad High Court rendered in ***Vinod Shankar Shukla and another Vs.***

<u>Bhoruka Logistics Pvt. Ltd. and another 2016(3) ACC 781</u> and Madhya Pradesh High Court in ***<u>Premlata Vijayvargiya and another Vs. Lokesh Kumar Batra and others 2017 AAC 150.</u>***

The Tribunal has also erred in not granting any sum for loss of love and affection to the parents and loss of estate, much less, the amount assessed towards funeral expenses is also very meager, thus, urges this Court for modification of the award passed by the Tribunal.

Per contra, Mr. Lalit Garg, learned counsel appearing for the insurance company submits that in the absence of any direct and cogent evidence, the Tribunal rightly took the income of the deceased as ₹6000/- per month. As regards the selection of multiplier, he relies upon the judgments of Hon'ble Supreme Court in ***<u>New India Assurance Co. Ltd. Vs. Shanti Pathak and others 2007 ACJ 2188, Shakti Devi Vs. New India Assurance Co. Ltd. and another 2011 ACJ 15</u>*** and ***<u>Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and others 2007 ACJ 2816</u>*** wherein it has been held that where the claimants are parents of the deceased, the choice of multiplier would depend upon the age of the claimants and not that of the deceased. He also relies upon judgment of a co-ordinate Bench of this Court rendered in FAO No.2455 of 2015 passed on 02.02.2017 titled as **"*<u>Usha and another Vs. Krishan and others</u>*"** and judgment of Delhi High Court rendered by Single Bench in ***<u>HDFC Ergo General Insurance Co. Ltd. Vs. Lalta Devi and ohers 2015 ACJ 2526.</u>***

According to him, the amount of compensation assessed by the Tribunal is perfectly legal and justified and there is no scope for further enhancement, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper and the judgments cited at Bar. As regards the issue of income of the deceased, it is conceded position on record that the deceased was engaged in the business of selling milk. The aforementioned factum has been proved by the testimonies of PW-1 to PW-7. PW2-Arya Mittar deposed that the deceased used to deliver about 5 litres milk to him every day for the last 7-8 years and was earning about ₹15,000/- per month. Similar were the statements of PW3-Mukesh Kumar, PW-4-R.C. Chopra, PW5-Avtar Singh, PW-6 Ram Singh and PW-7 Gurmukh Singh. PW-10, Sham Lal, Clerk of the Panchkula Central Co-operative Bank Ltd., Branch Office Ram Garh, Tehsil and District Panchkula brought on record the certified copy of account of deceased-Rajpal. A perusal of the same reveals that every month he was saving some amount in both of his bank accounts i.e. MMC No.839 and 2142. In MMC No.2142, from November 2004 to March, 2005 he continuously deposited ₹10,000/- per month and again on April 12, 2005 and February 2006 deposited ₹10,000/- and ₹19,920/- respectively. In MMC No.839, the closing balance was ₹55,330/- and in MMC No.2142, the closing balance was ₹81,935/-. From the perusal of testimonies of aforementioned witnesses and the statement of accounts brought on record by PW-10, it can be presumed that the deceased earning much more than what has been assessed by the Tribunal. Therefore, for a person who was crediting a certain sum in his bank accounts on regular basis, it can be guessed/presumed that he was earning at least ₹15,000/- per month. I will take the income of the deceased as ₹15,000/- and apply a 50% deduction on the same towards personal expenses.

As regards the choice of multiplier, the judgments relied upon the counsel for the insurance company are of the year 2007 and 2011 but after that the Hon'ble Supreme Court in ***Amrit Bhanu Shali and others Vs. National Insurance Co. Ltd. and others 2012(11) SCC 738; M. Mansoor and another Vs. United India Insurance Company Limited and another (2013) 15 SCC 603; Reshma Kumari and others Vs. Madan Mohan and another 2013(9) SCC 65; Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(6) SCC 347*** held that the selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent.

Even a Division Bench of Allahabad High Court in the judgment rendered in ***Vinod Shankar Shukla and another Vs. Bhoruka Logistics Pvt. Ltd. and another 2016(3) ACC 781*** and Single Bench of Madhya Pradesh High Court in ***Premlata Vijayvargiya and another Vs. Lokesh Kumar Batra and others 2017 AAC 150*** adopted multiplier based on the age of the deceased for assessing the compensation and not on the age of the parents. There are numerous judgments of this High Court also, where in the case of death of bachelor, the choice of multiplier was taken on the age of the deceased and not parent.

I am aware of the decisions of Hon'ble Supreme Court that have adopted a multiplier based on the age of the parents. The object and reasons of the Motor Vehicles Act is to provide a fair and just compensation and the Hon'ble Supreme Court from time to time settled principles regarding what would be the fair and just compensation in what circumstances and according to the change in the society and price inflation index, so that there may not be inconsistency in assessing the compensation at least in similar circumstances. A "just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.

Earlier the case law was that the multiplier in case of death of a bachelor shall be adopted on the basis of the age of the claimants whoever is older in age and not on the age of the deceased but as a subsequent development with the passage of time, another view expressed by the Hon'ble Supreme Court is that it will be age of the deceased which will be relevant in case of death of bachelor while adopting the multiplier and on the basis of the same, umpteen cases have been decided by various High Court and this High Court as well viz; ***Sauran Ram Vs. Dara Singh and others*** in FAO No.3512 of 2006 decided on 15.03.2017 (Punjab and Haryana High Court), ***Bano Bibi and others Vs. Jeet Singh and others*** in FMA No.1080 of 2009 decided on 08.03.2017 (Calcutta High Court), ***Lal Chand Vs. Karan Singh and another*** in Civil Appeal No.425 of 2001 decided on 25.05.2017 (Rajasthan High Court) and ***Shavaji and another Vs. Divisional Controller, MSRTC, Budhavar Path, Solapar*** in MFA No.201391 of 2016 (Karnataka High Court at Kalaburgai Bench).

Keeping in view the ratio decidendi culled out by the Hon'ble Supreme Court in the cases referred to above wherein the choice of multiplier is made on the basis of age of deceased and not parents, I will adopt the multiplier of 17 suitable to the age of the deceased who was 26 years old at the time of accident and re-assess the compensation in the following manner.

I will take the income of the deceased as ₹15,000/- per month, apply a deduction of 50% towards personal expenses and adopt a multiplier of 17 to assess the loss of dependency as ₹15,30,000/-. I will provide a further sum of ₹50,000/- each to the parents for loss of love and affection, ₹10,000/- for loss of estate and ₹25,000/- for funeral expenses.

In total, the compensation payable shall be ₹16,65,000/-. 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 the date of realization. The enhanced amount shall be distributed equally between the parties. The liability shall remain the same as has already been assessed by the Tribunal.

The award stands modified and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

August 02, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No