

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

FAO No.3809 of 2006

Date of Decision.20.12.2017

Harmail Singh

.....Appellant

Vs

Baldev Singh and others

.....Respondents

2. FAO No.3810 of 2006

Gurmail Singh and others

.....Appellants

Vs

Baldev Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parminder Singh-I, Advocate
for the appellant(s).

Mr. V. Ramswaroop, Advocate
for the insurance company.

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two appeals bearing Nos.3809 and 3810 of 2006 arising out of the same accident for enhancement of compensation on account of death of a four year old girl namely Daman and a lady of 43 years namely Gurmit Kaur respectively, both of whom unfortunately died in a motor vehicular accident occurred on 10.12.2003.

In the case of Daman, the Tribunal while assessing the compensation of ₹2,75,000/-, took the notional income of the child as ₹15000/- per annum and applied a multiplier of 15. In the case of Gurmit Kaur, it assessed the value of service of a householder to the tune of ₹3000/- per month and applied a multiplier of 16 for awarding a compensation of ₹5,80,000/- including ₹2000/- for funeral expenses and ₹2500/- for loss of

estate.

Mr. Parminder Singh-I, learned counsel appearing on behalf of the appellant(s) in both the cases submitted that the Tribunal erred in assessing the compensation on account of death of aforementioned persons. In the case of child aged 4 years, the Tribunal while taking into consideration the age of the parents for applying the multiplier, ought to have applied a multiplier of 17 instead of 15 as the claimants were 28 years of age. Moreover, the Tribunal held that respondent No.3 shall be liable to make the payment of the compensation within a period of two months from the date of the award, failing which it shall be liable to pay the same with interest @9% from the date of petition till realization whereas the claimants are entitled for interest from the date of filing of the claim petition till realization, therefore, the award of the Tribunal is required to be modified.

As regards the appeal filed for enhancement on account of death of Gurmit Kaur, he submitted that the value of the services of the deceased assessed to the tune of ₹3000/- per month is on lower side especially when there is a specific pleading that she was also assisting the family in agricultural work and dairy farming. It did not provide anything for loss of consortium, much less, the amounts provided towards loss of estate and funeral expenses are also on lower side. He raised similar argument qua application of rate of interest on the amount of compensation, and urged for modification of the award by enhancing the amount of compensation.

Mr. V. Ramswaroop, learned counsel appearing for the insurance company submitted that the Tribunal has taken care of all the heads of claim sufficiently and there is no scope for further enhancement,

thus, urges this Court for upholding the awards of compensation.

I have heard learned counsel for the parties and appraised the paper book. As regards the case of Daman, a child of 4 years died in a motor accident, the task of assessment of compensation is purely a guess work in terms of money in the absence of any actual loss of earning. The Hon'ble Supreme Court while dealing with the cases of death of children of TISCO employees in a fire accident in the case of *Lata Wadhwa Vs. State of Bihar 2001(8) SCC 197* observed that in case of the death of an infant, there may have been no actual pecuniary benefit derived by parents during the child's life time. But this will not necessarily bar the parents claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. The Hon'ble Supreme Court while taking into consideration the social and economic status of the parents and the prospect of education they could provide to their children and a chance to get employment in TISCO itself plus a reasonable expectation of pecuniary benefits the parents had, if the child lived, provided a compensation of ₹3.5 lacs.

In the instant case, there is no evidence available on record inkling a reasonable expectation of pecuniary benefits the parents could derive in future, had the child lived. The question whether there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law. Therefore, in the absence of same, I am of the view that the compensation assessed to the tune of ₹2,75,000/- for death of a child of four year meets the end of justice. However, I am in agreement with Mr. Parminder Singh that the claimants are entitled for interest from the date of filing of the claim petition till realization. Accordingly, the claimants shall

be entitled to interest @9% per annum from the date of filing of the claim petition till realization.

As regards the appeal in FAO No.3810 of 2006 for enhancement on account of death of Gurmit Kaur, I am of the view that the Tribunal has rightly valued the services of the deceased as ₹3000/- per month in view of the ratio decidendi culled out by Hon'ble Supreme Court in *Lata Wadhwa's case* (supra). The Tribunal adopted a multiplier of 16 whereas it should have been 14. If I recalculate the compensation as per the latest law, I am afraid there is any scope for enhancement. However, in this case also the claimants shall be entitled to interest @9% per annum from the date of filing of the claim petition till realization on the amount of compensation as assessed by the Tribunal.

The awards passed by the Tribunal are modified to the extent of interest only. Resultantly, the appeals in FAO No.3809 and 3810 of 2006 stand disposed of in above terms.

(AMIT RAWAL)
JUDGE

December 20, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No