

In the High Court of Punjab and Haryana at Chandigarh

FAO-4527 of 2010(O&M)
Date of Decision:18.8.2017

Mithlesh and others

---Appellants

vs.

Babu Ram and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.S.K.Gupta, Advocate
for the appellants

Mr. R.N.Singal, Advocate
for the insurance company

Rekha Mittal, J.

The claimants are in appeal seeking enhancement of compensation in regard to death of Hardam Singh in a motor vehicular accident that took place on 11.9.2007.

The Motor Accidents Claims Tribunal, Fast Track Court, Faridabad (hereinafter to be referred to as “the Tribunal”) assessed income of the deceased at Rs. 7,500/- per month, deducted 1/4th for personal expenses and applied multiplier of 15 to compute loss of dependency to the tune of Rs. 10,12,500/- but granted compensation of Rs. 10,00,000/- in view of claim made by the claimants in the application.

Counsel for the appellants has submitted that the Tribunal has

not allowed benefit of increase in income for future prospects nor awarded any compensation under conventional heads. It is argued with vehemence that even if the claimants have prayed for compensation of Rs. 10 lakhs, it is an obligation of the Tribunal to assess just and reasonable compensation. It is further argued that in case the compensation payable to the claimants is calculated more than what has been claimed in the application for compensation, the Tribunal cannot deny just compensation by restricting it to the amount claimed. In this context, reference has been made to judgment of Hon'ble the Supreme Court of India **Nagappa vs. Gurudayal Singh and others 2003(1) RCR (Civil) 258.**

Counsel representing the insurance company would urge that the Tribunal has assessed income of the deceased at Rs. 7,500/- per month without there being any cogent and convincing much less documentary evidence on record to justify findings of the Tribunal. It is further argued that as the Tribunal has already assessed income of the deceased at a higher rate which is almost double of the minimum wage available at the relevant time, claimants are not entitled to benefit of increase in income for future prospects.

I have heard counsel for the parties, perused the paper book particularly the award dated 19.11.2009.

Counsel for the insurance company has not cited any judgment contrary to what has been held in **Nagappa's case (supra)**. Compensation assessed by the Tribunal is more than Rs. 10 Lakhs but the Tribunal restricted it to Rs. 10 lakhs as per claim made in the application. That being so, findings of the Tribunal to restrict the compensation to Rs. 10 lakhs

cannot be sustained and accordingly set aside.

The Tribunal has assessed income of the deceased at Rs. 7500/- per month by taking into consideration testimonies of Bhim Singh PW4 and Surender Chaudhary PW-5 coupled with salary certificate Ex. P-7. The insurance company has not preferred any appeal against findings of the Tribunal assessing income of the deceased. Counsel for the insurance company has failed to point out any materials brought forth in cross examination of Bhim Singh and Surender Chaudhary to contend that their testimonies are not worthy of credence or cannot form the basis for findings recorded by the Tribunal. As such, I do not find any error much less illegality in the findings of the Tribunal assessing income of the deceased at Rs. 7,500/- per month.

The deceased was 37 years old. He has left behind a family consisting of his widow and four minor children. There is nothing on record suggestive of the fact that the deceased was suffering from any disability to work to the maximum of his capacity to earn livelihood for himself and his family. He would not have stagnated at a salary of Rs. 7,500/- per month, had he remained alive. Under the circumstances, the claimants shall be entitled to addition in income for future prospects to the extent of 50% as the deceased was less than 40 years of age. In this context, reference can be made to judgment of Hon'ble the Supreme Court of India **Rajesh and others vs. Rajbir Singh and others 2013(3) RCR (Civil) 170.** After allowing benefit of future prospects, loss of dependency comes to Rs. $7500 \times 12 \times 15 = \text{Rs. } 13,50,000 + 6,75,000 (50\%) = 20,25,000 - 5,06,250 (1/4^{\text{th}}) = \text{Rs. } 15,18,750/-.$

Under conventional heads, an amount of **Rs. 1,00,000/-** for loss of consortium to the widow, **Rs. 3,00,000/-** for loss of love and affection to the children to be shared equally, **Rs. 25,000/-** for expenses on funeral/last rites and **Rs. 25,000/-** for loss of estate has been awarded. The total compensation comes to **Rs. 19,68,750/-** and the additional amount is **Rs. 9,68,750/-**. The additional amount shall carry interest @ 7.5% from the date of petition till realization, payable to the claimants in equal proportion. The amount falling to share of minor claimants shall be deposited in a fixed deposit receipt for a period of three years or till they attain the age of majority, whichever is later.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

18.8.2017
paramjit

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