IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 255 of 2011 (O&M)
Date of decision: 16.08.2017

Chameli and another .... *Appellants*

Versus

Devinder Singh and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Ashish Gupta, Advocate
for the appellants

Mr. Atul yadav, Advocate
for respondent No. 1

Mr. Gopal Mittal, Advocate for
Mr. Rajesh Verma, Advocate
for respondent No. 3

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Rekha Mittal, J. (oral)

The claimants are in appeal seeking enhancement of compensation in regard to death of Arun, aged 20 years in a motor vehicular accident that took place on 21.02.2009.

The Motor Accidents Claims Tribunal, Gurgaon (herein after to be referred as 'the Tribunal') assessed income of the deceased at Rs.2,400/- per month, deducted Rs.600.00 for personal expenses and applied a multiplier of 13 to compute loss of dependency to the tune of Rs.2,80,800.00. In addition, an amount of Rs.10,000.00 on account of funeral and transportation expenses and another sum of Rs.10,000.00 for loss of consortium has been awarded making total compensation to Rs.3,00,800.00 payable with interest at the rate of 7% per annum and apportioned amongst parents and widow of the deceased, detailed in para 23 of the award impugned.

Counsel for the appellants has submitted that minimum wage admissible to an unskilled worker in State of Haryana in February 2009 was approximately Rs.4,000.00. As the deceased was 20 years old, appropriate multiplier would be 18 in the light of judgment of Hon'ble the Supreme Court of India ***Sarla Verma and others v. Delhi Transport Corporation, 2009 (3) R.C.R. (Civil) 77***. Compensation awarded under conventional heads needs re-look and enhancement.

Counsel representing the Insurance Company has supported the award with the submission that adequate and reasonable compensation has been assessed by the Tribunal.

Counsel representing respondent No.1 has echoed the arguments advanced by counsel for the insurance company.

I have heard counsel for the parties and perused the records particularly the award passed by the Tribunal.

As per plea of the claimants, the deceased was running a karyana shop and earned Rs.8,000/- per month. The Tribunal has held that the claimants have failed to produce any cogent and convincing evidence to substantiate their plea in this regard. Counsel for the claimants is not in a position to point out any material on record to establish plea of the claimants that the deceased was running a Karyana shop much less earning

Rs.8,000/- per month. However, the Tribunal has assessed income of the deceased at Rs.2,400/- per month by treating him as a labourer. As has been rightly argued by counsel for the appellants that minimum wage fixed by the State of Haryana and available in February, 2009 was Rs.3,840.00. There is nothing on record suggestive of the fact that the deceased was suffering from any ailment rendering him unable to work to the best of his capacity and earn livelihood for himself and his family. Under the circumstances, income of the deceased is assessed at Rs.3,840/-. The Tribunal has not allowed benefit of increase in income for future prospect to the extent of 50%. The mere fact that a reference is pending consideration before a larger Bench of Hon'ble the Supreme Court of India in view of reference made in ***National Insurance Company Limited v. Pushpa*** *(SLP (c) No. 16735 of 2014, decided on 02.07.2014)* and the observations made by the Apex Court in ***Shashikala and others v. Gangalakshmamma and another, 2015 ACJ 1239*** is not sufficient to deny benefit of future prospects till the judgment in ***Rajesh and others versus Rajbir Singh and others 2013 (3) R.C.R. (Civil) 170*** is varied or set aside.

The Tribunal has adopted a multiplier of 13 despite noticing that the deceased left behind family consisting of his parents and widow. In the light of enunciation by Hon'ble the Apex Court in ***Sarla Verma's*** case (supra), admissible multiplier would be 18. The Tribunal has allowed deduction to the extent of Rs.600/- towards personal and living expenses. In the light of ratio laid down in ***Sarla Verma's*** case (supra), admissible deduction is 1/3rd for personal expenses of the deceased.

In view of the above, compensation payable for loss of dependency is calculated at **Rs.8,29,440.00** (3,840x12x18)+50% (future prospects) - 1/3rd (deduction). Under conventional heads, claimants shall be entitled to Rs.25,000.00 for expenses of funeral and transportation of dead body. The mother of the deceased is allowed Rs.50,000.00 for loss of love and affection. It has come on record that widow of the deceased has re-married. However, it is not clear as to the date on which she performed marriage under the compelled circumstances. The widow is awarded an amount of Rs.20,000.00 for loss of consortium. Another sum of Rs.25,000.00 is awarded for loss of estate. In this manner, total compensation comes to **Rs.9,49,440.00** and the additional amount is **Rs.6,48,640.00**. The additional amount shall carry interest at the rate 7.5% per annum from the date of petition till realization payable to the appellants and widow of the deceased in the ratio determined by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

16.08.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No