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

FAO No.2662 of 2011
Date of Decision.10.08.2017

Smt. Manisha Devi alias Munesh and others ....Appellants

Vs

Rulia Ram and others ....Respondents

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. A.S. Talwar, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appellants are the legal representatives of deceased-Subhash, who died in a motor vehicular accident that took place on 16.07.2007. The deceased was going from the side of Indri to Karnal on his motor cycle bearing registration No.HR-05R-3571 and when they were standing on katcha portion of the road on left side, a tractor bearing registration No.HR-05K-4056, being driven rashly and negligently by respondent No.1, hit the deceased from behind, resulting into death on the spot. The claimants are widow, two sons and mother. The deceased, aged 42-43 years at the time of accident, was serving in Police Department as Head Constable and drawing monthly salary of ₹15,931/-.

The Tribunal while assessing the compensation, took the net income of the deceased as ₹12,000/- after deducting the amount of ₹4000/- from the gross salary and further deducted ₹4000/- towards personal expenses. It applied a multiplier of 5 to assess the loss of dependency as

₹4,80,000/- . It further added ₹10,000/- for transportation and expenses on last rites, thus, in total, assessed the compensation of ₹4,90,000/- with interest @6% from the date of filing of the petition till its realization.

Mr. Bhan, learned Senior Counsel assisted by Mr. A.S. Talwar, learned counsel appearing for the appellants contends that the Tribunal has grossly erred in deducting the amount of ₹4000/- from the gross salary drawn by the deceased, much less, made a deduction of 1/3rd towards personal expenses whereas it should have been 1/4th as there are four dependents. In support of his contention relies upon the judgment of Hon'ble Supreme Court in ***Lal Dei and others Vs. Himachal Road Transport 2007(8) SCC 319*** wherein it has been held that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants.

He further states that the Tribunal has grossly erred in adopting the multiplier of 5 by observing that since the wife of the deceased would continue to get salary of the deceased upto the age of 55 years of the deceased, there is no loss of dependency upto the age of 55 years and therefore, for a person aged 55 years, multiplier of 5 is just and fair. Even if for the sake of arguments, though not admitted, the age of the deceased is to be taken 55 years, the appropriate multiplier shall be 11 and not 5. It also not provided anything under the conventional heads of loss of consortium, loss of love and affection and loss of estate. The deceased, aged 42 years at the time of his death, was in permanent employment, therefore, 30% increase in salary for future prospects ought to have been granted by the Tribunal, thus, the amount of compensation is required to be re-assessed as per the formula prescribed by the Hon'ble Supreme Court in ***Sarla Verma Vs. DTC 2009(6) SCC 121.***

Per contra, Mr. Vinod Gupta, learned counsel appearing on behalf of the insurance company submits that the compensation assessed by the Tribunal is fair and just. The Tribunal has rightly applied the multiplier by taking the age of the deceased as 55 years, keeping in view that the fact that as per the Haryana Government Instructions, widow of the deceased-Subhash Chander is entitled for salary which the deceased was drawing upto the age of 55 years of the deceased without increment, thus, there is no scope for further enhancement and the appeal is liable to be dismissed.

I have heard learned counsel for the parties, appraised the paper book and of the view that the Tribunal has committed illegality and perversity in deducting the amount of ₹4000/- from the gross salary drawn by the deceased. The Tribunal ought to have taken the income of the deceased as ₹15,931/- per month and provided increase of 30% on the same on account of future prospects in view of the ratio decidendi culled out by Ho'ble Supreme Court in ***Sarla Verma's case*** (supra) and other subsequent judgments.

There is no dispute to the ratio decidendi culled out by the Hon'ble Supreme Court in ***Lal Dei's case*** (supra) but the facts of this case are different. In the present case, the widow of the deceased-Subhash Chander was not getting the pension amount but she was getting full salary which the deceased was getting at the time of his death and continued to get, had he been alive upto the age of 55 years. Therefore, there was no loss of dependency upto the age of 55 years of the deceased but the multiplier should have been adopted as 11 instead of 5 as has been done by the Tribunal.

Keeping in view the aforementioned fact, I will take the income of the deceased as ₹15,931/-, provide a 30% increase on the same as future prospects, make a cut of 1/4th towards personal expenses and adopt a multiplier of 11 to assess the loss of dependency at ₹20,50,320/-. I will add a further sum of ₹1 lac towards loss of consortium to the wife, Rs.1 lac each to both the children and ₹50,000/- to the mother towards loss of love and affection, ₹25,000/- for funeral expenses and ₹10,000/- for loss of estate.

In toto, the compensation payable shall be ₹24,35,320/-. 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 realization. The enhanced amount shall be distributed amongst the claimants in the ratio of 2:2:2:1 i.e. the mother will get half of the share of other claimants i.e. widow and children. The liability shall remain the same as has already been determined by the Tribunal.

The award passed by the Tribunal is modified and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

August 10, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No