**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**FAO-5451-2010**
**Date of decision : 08.08.2017**

Neetu and others

... Appellant(s)

Versus

Jaswant Singh and another

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sagar Aggarwal, Advocate
for the appellants.

Mr. Gopal Mittal, Advocate
for respondent No.2/Insurance Company.

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**AMIT RAWAL, J. (ORAL)**

The deceased Rajesh Kumar is stated to have run a Dhaba/Hotel in the name and style of Kumar Delux Dhaba, G.T. Road in the area of Village Khanpur Jattan and earning a sum of ₹ 15,000/-. He is stated to have died in a road accident occurred on 21.03.2008 while travelling on the motor cycle bearing Registration No.HC-07L-0942, which has met with accident with an Indigo Car bearing Registration No.DL-9CU 0055. Learned Motor Accident Claims Tribunal (in short 'the Tribunal') has rendered the findings on issue No.1 qua negligence on the part of the owner and driver of the vehicle and therefore, fastened the liability.

Learned counsel for the appellants/claimants submits that the deceased has left behind three minor children and the parents. The income has been taken as ₹ 10000/-. No compensation towards loss of love and affection has been awarded. Only meagre amount of ₹ 10,000/- has been awarded towards loss of consortium, much less, ₹ 5,000/- towards loss of estate, medical expenses and funeral expenses each, whereas it should have been more. The Court has not taken into consideration income tax return for the year 2006-2007 (Ex.P-1) and Ex.P-2 dated 13.09.2007, where there is a considerable increase in income as in Ex.P-1 & Ex.P-2, the gross income has been taken as ₹ 1,07,000/- and ₹ 1,82,397/- respectively, thus, the income per month almost approximately comes to ₹ 15,000/-, thus, there is likelihood to increase the amount of compensation and urges this Court for modifying the award.

Mr. Gopal Mittal, learned counsel appearing on behalf of the respondent(s) submits that the Dhaba/Hotel is still there, therefore, there is no loss of income and anybody can run the Dhaba/Hotel and earn the income, thus, there is hardly loss of income. At the best, there can be loss of love and affection and loss of consortium, therefore, the income of the deceased as ₹ 10,000/- is perfectly legal and justified and urges this Court for upholding the award.

I have heard the learned counsel for the parties and appraised the paper book and of the view that income tax returns would have definitely helped as the person had been in employment and earning ₹ 10,000/-, but the fact remains that the Dhaba is still there and there is no evidence to the contrary. The multiplier of 15 and deduction 1/4$^{th}$ is correct and justified. I do not intend to take the income of the deceased as ₹ 15,000/- as being projected in the appeal, thus, the aforementioned plea is hereby rejected.

As regards the increase of future prospect, the Hon'ble Supreme Court in the *ratio decidendi* culled out in the judgment rendered in ***"Chikkamma and another V/s Parvathama and another"*** passed in Civil Appeal No.3409 of 2017 decided on 28.02.2017 has refused to grant claim for future prospects with regard to self employed person, owing to the fact that the issue with regard to award of future prospects of a self-employed person is pending before a larger Bench of Hon'ble Supreme Court. The relevant paragraph 9 of the same reads as under:-

> *"9. Taking into account the fact that the deceased was a self employed person and also as a question with regard to award of future prospects of a self employed person is presently pending before a larger Bench of this Court and as some enhancement of compensation has already been made by us, we are of the view that in the facts of the present case, the claim for future prospects ought not to be gone into by us. The said claim, therefore, is refused."*

In view of the *ratio decidendi* culled out by Hon'ble Supreme Court in ***"Chikkama's case*** (supra), I will constrain myself to award any amount for future prospects at this stage, for, the aforementioned issue is pending adjudication before the large Bench of Hon'ble Supreme Court.

However, I increase the amount of compensation under the head of loss of consortium, love and affection, loss of estate and funeral expenses, which is as under:-

| **FATAL ACCIDENT** | | | |
|---|---|---|---|
| Age | 36 years | | |
| Occupation | Hotel Owner | | |
| Claimants | Wife, daughter, sons and parents | | |
| | **Heads of claim** | **Tribunal** | **High Court** |
| Sr. No. | | Amount(₹ ) | Amount (₹) |
| 1 | Income | 10000 | 10000 |
| 2 | Add, % of increase 30% / 50% | | |
| 3 | Less Deduction (1/4) | 7500 | 7500 |
| 4 | Multiplicand (annualized by multiplying 12) | 90000 | 90000 |
| 5 | Multiplier | 15 | 15 |

| | | | |
|---|---|---|---|
| | **FATAL ACCIDENT** | | |
| 6 | Loss of dependence | 1350000 | 1350000 |
| 7 | Medical Expenses & Transportation | 5000 | -- |
| 8 | Loss of Consortium | 10,000 | 1,00,000 |
| 9 | Loss of love and affection @ 1,00,000/- to child & ₹ 50,000 to parents | -- | 400000 |
| 10 | Loss to estate | 5000 | 10000 |
| 11 | Funeral expenses | 5000 | 25,000 |
| | **Total** | **13,75,000** | **18,85,000** |

The total compensation payable shall be ₹ 18,85,000/-. 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 liability shall remain the same as fixed by the Tribunal.

Resultantly, the appeal is partly allowed and the award is modified to the aforementioned extent.

**( AMIT RAWAL)**
**JUDGE**

**08.08.2017**
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**

✓
Whether Reportable **Yes/ No**