IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5713 of 2010
Date of decision:- March 28, 2017

BALBIRI DEVI AND ANOTHER ....APPELLANTS..

VS.

ISHAM SINGH AND OTHERS ....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. R.S. Mamli, Advocate,
for the appellants.

Mr. R.S. Dhull, Advocate,
for respondent No.4-ICICI Lombard Ins. Co.

****

JASPAL SINGH, J.

Aggrieved against the inadequacy of compensation awarded vide award dated 28.05.2010 passed by Motor Accident Claims Tribunal, Yamuna Nagar, Jagadhri (for brevity, "Tribunal" only) on account of death of Rinku in a vehicular accident occurred on 25.03.2009 near village Jubbal, due to rash and negligent driving of Bus No.HR58-8883 by its driver Isham Singh-respondent No.1, appellants-claimants have preferred the instant appeal.

2. Assailing the impugned award dated 28.05.2010, it has been argued by learned counsel for the appellants that ld. Tribunal has assessed the income of the deceased only to the tune of ₹3000/- whereas, he was earning ₹6000/- per month. However, ld. Tribunal has applied a multiplier of 12 only whereas multiplier of 18 should have been applied keeping in

view the age of the deceased, who was 20 years of age at the time of his unfortunate demise. Moreover, nothing has been awarded on account of future prospect and loss of love and affection whereas a sum of ₹5000/- has been awarded on account of funeral expenses, which is unjust and inadequate. Further a sum of ₹5000/- has also been awarded on account of loss of consortium, totalling ₹2,98,000/-.

4. On the other hand, learned counsel for the respondents have supported the impugned award dated 28.05.2010 and has submitted that just and adequate compensation has already been awarded by the ld. Tribunal. There is no illegality and infirmity in the impugned award. Thus, appeal being devoid of merits is liable to be dismissed, that too, with special costs.

5. After bestowing due consideration to the rival submissions made by learned counsel for the parties, appraisal of evidence and scanning the impugned award dated 28.05.2010, this Court finds legal and factual substance in the various submissions made by learned counsel for the appellants.

6. Undisputably, the income of the deceased has been assessed to the tune of ₹3000/- per month, who was aged about 20 years and was unmarried at the time of accident. Since, there is no documentary evidence in support of income being earned by the deceased, thus, by treating him as a casual labourer, assessment of his income to the tune of ₹3000/- is legally and factually justified. Ld. Tribunal has adopted the multiplier of 12 by considering the age of the claimants, but in view of the judgment captioned as ***"Munna Lal Jain and another v. Vipin Kumar Sharma and others;2015(3) SCC (Civil) 315,*** multiplier is to be applied with reference to the age of the deceased and not the age of dependents of deceased. Thus, in

view of the age of the deceased, multiplier of 18 should have been applied. As such, total amount of compensation on account of dependency comes to ₹4,32,000/-(2000x12x18) after deducting 1/3rd of expenses which deceased would have incurred towards maintaining himself had he been alive. Ld. Tribunal has also awarded a sum of ₹5000/- on account of loss of consortium to the claimants, in fact, they are not legally entitled as the deceased was unmarried and has no wife.

7. Here, it would also be pertinent to mention that neither any compensation has been awarded by ld. Tribunal on account of loss of love and affection nor on account of future prospect and the compensation awarded on account of funeral expenses is highly unjust and inadequate, especially, in view of the guidelines laid down in ***"Smt. Sarla Verma and others v. Delhi Transport Corporation and another" 2009(3) RCR (Civil) 77,*** which has subsequently been approved in case captioned as ***"Rajesh vs. Rajbir 2013 (3) RCR (Civil) 170***. As per the guidelines, appellants/claimants are entitled for compensation on account of future prospect. The deceased was 20 years of age at the time of his death in accident, thus, the claimants are entitled to 50% of the actual income of the deceased, which works out to ₹1500/- per month. Thus, after adding 50% future prospect, per month income comes to ₹4500/- (3000+1500(50%). After deducting 1/3rd of the amount as personal expenses, the annual dependency of the claimants comes out to ₹36,000/- (4500-1500(1/3)=3000x12. By applying the multiplier of 18 to the annual dependency, the total compensation comes out to ₹6,48,000/-. Similarly, appellants-claimants being the parents of the deceased are also entitled to compensation to the tune of ₹1,00,000/- on account of loss of love and

affection and further to the tune of ₹20,000/- more on account of funeral expenses in addition to a sum of ₹5000/- already awarded, thus, totallying ₹25,000/-. Thus, the total amount works out to ₹7,73,000/-, to which the appellants-claimants are entitled on account of death of Rinku. As such, appellants-claimants are entitled to total enhancement of compensation to the tune of ₹4,75,000/- as against the compensation of ₹2,98,000/- already awarded by the ld. Tribunal.

8. As a sequel of the aforesaid discussion, appeal is partly allowed. Appellants-claimants shall be entitled to enhanced amount of ₹4,75,000/- in addition to the compensation already awarded. Although as per award there is joint liability of compensation upon respondents No. 1 to 4 yet respondent No.4-Insurance Company is to indemnify the owner. Accordingly, the insurer i.e. insurance company-respondent No.4 is directed to pay the amount so enhanced within a period of two months from the date of receipt of certified copy of this order and on its failure to make the payment within stipulated period, it would entail interest @ ₹7.5% per annum from the date of filing of the claim petition before the Tribunal till its realization. Parties to bear their own cost.

March 28, 2017 **(JASPAL SINGH)**
sonika **JUDGE**

Whether speaking/reasoned: Yes

Whether reportable: Yes/No