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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6692-2010
Date of decision : 08.08.2017

Kulwinder Kaur and others

... Appellant(s)

Versus

Jagbir Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Nonish Kumar, Advocate
for the appellants.

Mr. Sanjiv Pabbi, Advocate
for respondent No.3/Insurance Company.

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AMIT RAWAL, J. (ORAL)

The appellants are the LRs of deceased Rajinder Singh Minhas, who unfortunately, died in a road accident occurred on 31.08.2007 at 3 a.m. in the area of G.T. Road, Nirmal Kutia Chowk, Karnal falling within the jurisdiction of Police Station, Civil Line, Karnal. The deceased along with his relatives namely, Devender Singh and Kamaljeet Kaur were travelling in car bearing Registration No.DL-3C-AP-5711 from Delhi to Hoshiarpur, which was driven by Devender Singh and the deceased was sitting in front seat. However, a truck Swaraj Mazda bearing Registration No.HR-46-A-4816, allegedly to have been driven rashly and negligently, struck with the Car, resulting into, death of the deceased Rajinder Singh Minhas, who was 31 years of age and stated to be working as Driver and running a Company in the name and style of West End Express Inc. 1400, Jersey Ave New Burn

Siwik, USA and earning $ 9600 i.e. ₹ 4,25,000/- per month. An FIR bearing No.437 dated 31.08.2007 under Sections 282, 337, 304-A IPC was registered with Civil Line Police Station, Karnal and the claim was laid to compensation of ₹ 8,10,00,000/- with interest @ 24% per annum. The aforementioned accident was denied by the Insurance Company/respondent No.3, however, the Motor Accident Claims Tribunal (in short 'the Tribunal'), on the basis of the oral and documentary evidence, found that the driver of the truck, aforementioned, was driving the vehicle rashly and negligently, in essence, rendered the finding on issue No.1 in favour of the claimants/appellants.

As regards the issue No.2 i.e. the amount of compensation, the claimants attempted to place on record various documents i.e. Income Tax Return bearing the social security number of the deceased and as well as the salary certificate (Ex.P-8) showing the income to be $ 2150 per week, but the same had been rejected by the Tribunal, as they did not bear the stamp of the Consulate General of India. In fact Ex.P-8 (Salary Certificate) was objected to and the other documents i.e. Income Tax Returns were marked and in the absence of proof of the income, assessed, the income of the deceased, as ₹ 5,000/- per month and awarded a compensation ₹ 7,80,000/-.

Learned counsel appearing on behalf of the appellants submits that even though Ex.P-8 was attested by Suresh Kumar, Assistant Commissioner Office, Consulate General of India, New York, but the said document was objected to being not original one, the Court could have taken the daily wages of a worker in USA in that particular year, which according to him, was $ 58 per day i.e. 7.25 $ per hour and the income would come to ₹ 78,300/- per month. There is substantial increase in the compensation, much less, in the head of consortium and love and affection, thus, urges this Court for enhancement of the compensation.

Mr. S.K. Pabbi, learned counsel appearing on behalf of respondent No.3/Insurance Company submits that the aforementioned documents cannot be looked into in the absence of its proof. Mere exhibition of the document does not dispense with proof. All the documents were not proved in accordance with law and rightly been rejected. Even if Ex.P-8 had been attested by the Consulate General of India, but the same was objected to, which was never overruled. The claimants moved an application for exhibition of the documents and the same was dismissed vide order dated 20.08.2009 enabling the claimants to get the documents verified from the American Embassy. In the absence of proving of the documents, the award, under challenge, is liable to be upheld.

He further submits that in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in ***"Divisional Manager, Oriental Insurance Company Ltd. V/s Swapna Nayak and others" (2017) ACJ 697***, Tax Deducted at Source is liable to be deducted on the annual income in accordance with law.

In rebuttal, Mr. Nonish Kumar, submits that the deceased left behind the widow, minor daughter and parents. The travelling expenses from USA to India for every tourist is not less than ₹ 1 Lacs, thus, the amount of income of the deceased as ₹ 5,000/- per month is too meager.

I have heard the learned counsel for the parties and appraised the paper book and in agreement with the submissions of Mr. Nonish Kumar. By rejecting the documents which have not been proved in accordance with law i.e. Ex.P-8 salary certificate issued by the Agency, with whom, the deceased was working as a Driver and Income Tax Return, which was though bearing a social security number have not been got verified from the American Embassy in accordance with law, rightly so, no weightage has been granted, but this Court cannot shut the eyes to the minimum wages being earned by an employee in USA, in the year 2009 and as per United States Department of Labor Wage and Hour Division, the minimum wages of any worker was $ 7.25 per hour and by taking 8 hours' working, a worker would earn $ 58 per day, in essence, $ 1740 per month (₹ 78,300/- per month).

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.

Accordingly, I will take the income of the deceased as ₹ 78,300/- and apply a deduction of 1/4th. I will adopt a multiplier of 16 as has been done by the Tribunal and provide ₹ 1 lac for loss of consortium to the wife, ₹ 1 Lac to the minor daughter and ₹ 50,000/- each to the parents for loss of love and affection, ₹ 10,000/- towards loss of estate and ₹ 25,000/- for funeral expenses. The various heads of claim are tabulated as under:-

FATAL ACCIDENT			
Age	31 years		
Occupation	Broker in Sale/Purchase of vehicle		
Claimants	Wife, one minor daughter and parents		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount(₹)	Amount (₹)
1	Income	5000	78300
2	Add, % of increase 30% / 50%		
3	Less Deduction (1/3)	3333	58725 (1/4th)
4	Multiplicand (annualized by multiplying 12)	40000 (odd amount)	7,04,700
5	Multiplier	16	16
6	Loss of dependence	640000	1,12,75,200
7	Medical Expenses & Transportation	110000	110000
8	Loss of Consortium	10000	100000
9	Loss of love and affection @ 1,00,000/- to child & ₹ 50,000 to parents	10000	200000
10	Loss to estate		10000
11	Funeral expenses	10000	25000
	Total	**7,80,000**	**1,17,20,200**

The total compensation payable shall be ₹ 1,17,20,200/-. 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. TDS shall be deducted on the annual income of the appellant as assessed by this Court in accordance with law, in view of the *ratio decidendi* culled out in ***Divisional Manager, Oriental Insurance Company Ltd.'s case (supra)***.

Resultantly, the appeal is 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**