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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-462-2011
Date of decision : 08.08.2017

Munesh Devi and others

... Appellant(s)

Versus

Om Parkash and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Khurana, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for the respondent(s)/Insurance Company.

Mr. Aditya Yadav, Advocate
for respondent No.2.

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AMIT RAWAL, J. (ORAL)

The appellants are the LRs of the deceased Maman Singh, who had unfortunately died in an accident on 27.01.2009 at 5 p.m., when he was going towards bus-stand of Village Kharkhara on Motor Cycle bearing Registration No.HR-36K-0511, which was driven by Jitender and the deceased was sitting thereon as a pillion rider. The motor cycle was hit by a canter bearing Registration No.HR-55-0721, driven by Om Parkash/respondent No.1. The canter was insured by Insurance Company i.e. New India Insurance Company. Learned Motor Accident Claims Tribunal (in short 'the Tribunal') has rendered the findings on the negligence part i.e. an FIR bearing No.19 dated 27.01.2009 under Section 279, 304-A

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IPC was registered at Police Station Dharuhera. The present appeal has been filed for increasing the amount of compensation on the premise that the deceased was working as a broker in the sale and purchase of the vehicle and his income has been taken only ₹ 3,300/-, whereas on the contrary, two passbooks and life insurance, whereby one time premium of ₹ 1,584/- and ₹ 2,000/- an odd amount was paid. The passbooks reveal that the deceased was depositing ₹ 2,000/- & ₹ 1,000/- every month and therefore, his income could not have been taken as ₹ 3,300/-, even the minimum wages in the year 2009 were ₹ 3,840/-, therefore, the Tribunal ought to have taken the aforementioned aspect, thus, the deceased was a man of means, therefore, his income assessed is on the lower side. No compensation has been awarded on account of love and affection and only a sum of ₹ 5,000/- towards loss of consortium and loss of estate each, has been awarded. The funeral expenses were on the lower side, thus, urges this Court for enhancement of the compensation.

Mr. Vinod Gupta, learned counsel appearing on behalf of the respondent(s)/Insurance Company submits that in the absence of proof of income, the learned Tribunal has rightly taken the income of the deceased as ₹ 3,300/-. No strict principles of evidence have been applied, but the aforementioned documents have not been proved in accordance with law. The passbooks were also revealed that the deceased was simultaneously withdrawing the amount, which was less than ₹ 2000/-, but above ₹ 1,500/, therefore, he cannot be said to be a man of means, thus, urges this Court for upholding the award.

I have heard the learned counsel for the parties and appraised

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the paper book and of the view that there is no force and merit in the submissions of Mr. S.S. Khurana that the deceased was earning ₹ 15,000/- per month. The Insurance Policy also reveals the payment of ₹ 1,584/- and ₹ 2,000/- an odd amount. In the both the passbooks, the deceased was though depositing ₹ 2,000/- but withdrawing ₹ 1,750/-. No doubt as per the Minimum Wages Act applicable in the Haryana Government w.e.f. 01.01.2009, the minimum wages were ₹ 3,840/-.

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.

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Accordingly, I will take the income of the deceased as ₹ 3840/- and apply a deduction of 1/4th. I will adopt a multiplier of 17 as has been done by the Tribunal and provide ₹ 1 lac for loss of consortium to the wife, ₹ 1 Lac each to the two minor daughters 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	28 years		
Occupation	Broker in Sale/Purchase of vehicle		
Claimants	Wife, 2 minor daughters and parents		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount(₹)	Amount (₹)
1	Income	3300	3840
2	Add, % of increase 30% / 50%		
3	Less Deduction (1/4)	2475	2880
4	Multiplicand (annualized by multiplying 12)	29700	34560
5	Multiplier	17	17
6	Loss of dependence	5,04,900	587520
7	Medical Expenses & Transportation		--
8	Loss of Consortium	5000	1,00,000
9	Loss of love and affection @ 1,00,000/- to child & ₹ 50,000 to parents	--	300000
10	Loss to estate	5000	10000
11	Funeral expenses	5000	25000
	Total	**5,19,900**	**10,22,520**

The total compensation payable shall be ₹ 10,22,520/-. 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

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realization. The liability shall remain the same as fixed by the Tribunal.

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

(AMIT RAWAL)
JUDGE

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

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