IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 201 FAO-6238-2012

Decided on : 12.12.2017

Monika and others ..... Appellants

VERSUS

Virender Kumar and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.B.R.Gupta, Advocate, for the appellants.

Mr.Suvir Dewan, Advocate, for respondent No.3-Insurance Co.

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DEEPAK SIBAL, J. (ORAL)

The widow and the parents of deceased-Prince have preferred the present appeal seeking enhancement in the compensation awarded by the Motor Accidents Claims Tribunal, Jind (for short the 'Tribunal').

The facts in brief are that on 13.07.2011 Prince (since deceased) was going on his motorcycle bearing Registration No.HR-32C-5606 followed by his father Tarsem Kumar Goyal and one Radhey Shyam. When he crossed Frain Chowk, a Truck Trailer bearing Registration No.HR-056-A-0127 struck his motorcycle as a result of which he fell down and was crushed under its wheel. He was rushed to General Hospital Narwana from where he was referred to PGIMS, Rohtak where he succumbed to his injuries.

The Tribunal after assessing the monthly income of the deceased @ Rs.6,000/-, applied thereto a cut of $1/3^{rd}$ towards the deceased personal expenses and then after applying a multiplier of 16 assessed the compensation of Rs.7,78,000/- towards loss of dependency. A lump-sum amount of Rs.10,000/- was further granted by the Tribunal towards expenses for the funeral and transportation as also towards consortium. The Tribunal directed that out of the awarded compensation, Rs.4,00,000/- shall be paid to the widow and the remaining amount of Rs.3,78,000/- shall be shared by the parents of the deceased with a stipulation that 25% of the amount awarded to the parents of the deceased shall be paid to them in cash and the remaining 75% would be converted into a fixed deposit for a period of ten years in a nationalized bank fetching the maximum rate of interest out of which periodical interest would be paid to them.

Learned counsel for the appellants submits that the latest income tax returns of the deceased which were duly proved by the appellants clearly depicted the annual income of the deceased to be Rs.1,22,430/- and therefore the compensation should have been assessed by taking the monthly income of the deceased to be at least Rs.11,000/-. He further finds fault with the award of the Tribunal for having granted only a lump-sum amount of Rs.10,000/- towards transportation and funeral expenses as also under the head 'consortium'. According to him funeral expenses @ Rs.15,000/-, consortium @ Rs.40,000/- and transportation expenses @ Rs.50,000/- should have been granted. The award of the Tribunal is further assailed for having applied the multiplier of 16 instead of 18. Future prospects @ 40% were also claimed.

Learned counsel for respondent No.3-Insurance Company very fairly submits that as per the recent decision of a Constitution Bench of the Apex Court in SLP (C) No.25590 of 2014 "*National Insurance Company Limited vs. Pranay Sethi and others*" the appellants would be entitled to consortium @ Rs.40,000/-; funeral expenses @ Rs.15,000/-; loss of estate @ Rs.15,000/-; 40% increase in the income of the deceased on account of future prospects and that while assessing compensation on loss of dependency a multiplier of 18 instead of 16 should have been applied by the Tribunal.

So far as the income of the deceased is concerned, the Tribunal after having noticed the income tax returns of the deceased which were filed much prior to his death, where his total annual income was depicted as Rs.1,22,430/- had assessed his monthly income to be only Rs.6,000/-. Once the latest income tax returns which had been filed by the deceased prior to his death, had been duly proved by the appellants and which had also been accepted by the Income Tax Department, the monthly income of the deceased should have been assessed at Rs.11,000/-.

In view of the above, the compensation awarded by the Tribunal through the impugned award is enhanced as follows: -

1. The assessed monthly income of the deceased is enhanced from Rs.6,000/- to Rs.11,000/- alongwith future prospects @ 40%.
2. Multiplier of 18 instead of 16 be applied.
3. Appellant No.1 is held entitled to consortium @ Rs.40,000/- and Rs.15,000/- on account of loss of estate.
4. The appellants are also held entitled to funeral expenses @ Rs.15,000/-.

The appellants are further held entitled to interest @ 6% on the above enhanced amounts payable from the date of filing of the claim petition till the date of realization.

Only appellant No.1 shall be entitled to the enhanced compensation under the heads 'consortium' and "loss of estate". The rest of the enhanced compensation shall be shared by appellant No.1 on one hand and appellants No.2 and 3 on the other in the same proportion as granted by the Tribunal.

So far as the direction given by the Tribunal to keep 75% of the awarded amount to appellants No.2 and 3 in a fixed deposit is concerned, after considering that both of them are now senior citizens, it is directed that the amount lying in the fixed deposit alongwith enhanced compensation to which they are found entitled, be paid to them forthwith.

The appeal is allowed in the above terms.

12.12.2017
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No