IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 10470 of 2014 (O&M)
Date of decision: 06.09.2017

Gurmail Kaur and others .... *Appellants*

Versus

Lal Singh through his LRs and others ....*Respondent*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. S K Garg, Advocate for
Mr. A S Mann, Advocate
for the Appellants

Mr. Vinod Gupta, Advocate
for respondent No. 3

Mr. Manu Loona, Advocate
for respondent No. 6

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Rekha Mittal, J. (Oral)

CM 28832 CII of 2014

Prayer in this application is for condoning delay of 411 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the parties, the application is allowed and delay of 411 days in filing the appeal stands condoned subject to the condition that in case the appellants succeed in appeal, they will forgo interest for the period of delay.

Main Case

The claimants are in appeal seeking enhancement of compensation in regard to death of Harpreet Singh in a motor vehicular accident that took place on 22.09.2011.

The Tribunal assessed income of the deceased at Rs.5,000/- per month, deducted 1/3rd for personal expenses and applied multiplier of 18 to compute loss of dependency at Rs.7,19,712/-. In addition, Rs.5,000/- for expenses on funeral and another sum of Rs.5000/- for loss of estate has been awarded making total compensation to Rs.7,29,712/ but the claimants were held entitled to get 50% amount of compensation from the owner and insurer of Trolla No. RJ-19-GA-9651 as 50% negligence has been attributed to deceased Harpreet Singh while driving truck No. RJ-13IG-1267, loaded with bricks.

Counsel for the claimants would urge that compensation assessed by the tribunal both qua loss of dependency and under conventional heads is inadequate and liable to be enhanced. To bring home his contention, it is argued that the deceased was 20 years old and working as a driver of heavy goods vehicle, therefore, claimants are entitled to get benefit of increase in income for future prospects to the extent of 50% in the light of judgment of Hon'ble the Supreme Court of India ***Rajesh and others v. Rajbir Singh and others, 2013 (3) R.C.R. (Civil) 170***.

Counsel representing the insurance company would state that in the grounds of appeal, claimants have not prayed for extending benefit of increase in income qua future prospects. In addition, it is argued that the matter with regard to future prospects is pending consideration before a larger Bench of Hon'ble Supreme Court of India in view of reference made in ***National Insurance Company Limited v. Pushpa*** *(SLP (c) No. 16735 of*

2014, decided on 02.07.2014) and the observations made by the Apex Court in ***Shashikala and others v. Gangalakshmamma and another, 2015 ACJ 1239.*** Counsel has also referred to judgment of Hon'ble the Supreme Court Chikkamma and another v. Parvathamma and another (decided on 28.02.2017 in Civil Appeal 3409 of 2017) wherein benefit of future prospects has not been allowed.

Another submission made by counsel is that as the deceased was an unmarried boy, admissible deduction for personal and living expenses should be ½ in place of 1/3.

Counsel representing respondent No.6 would urge that adequate compensation has been awarded by the Tribunal.

As per settled position in law, the Court in appeal can re-appreciate the evidence and examine every aspect of the matter and pass a judgment which ought to have been passed by the trial Court. The provisions of the Motor Vehicles Act, 1988 providing for grant of compensation to the victim or his family are benevolent social legislation to make good the loss suffered by the victim family. It has been laid down in a catena of judgments rendered by Hon'ble the Supreme Court that the Tribunal and the Court in appeal has an obligation to assess just and reasonable compensation but compensation cannot be a source of profit or bonanza for the victim family. Equally true is that if compensation assessed by the Tribunal is more than what has been claimed by the claimant (s), there is no bar to grant compensation assessed by the Tribunal/the Court. Under the circumstances, contention raised by counsel for the insurance company that the claimants cannot ask for increase in income for future prospects for want of raising a plea in this regard in grounds of appeal is misconceived and liable to be rejected.

The deceased was a young boy aged 20 years. The application was filed by his widowed mother, widowed grandmother and two minor siblings namely Gurpreet Singh and Satvir Kaur. Harpreet Singh met an unfortunate end while he was driving the aforesaid truck. There is nothing on record suggestive of the fact that deceased was suffering from any disability afflicting his capability to work and earn livelihood for himself and his family. He would not have stagnated at income of Rs.5,000/- per month, had he remained alive. Under the circumstances, the claimants cannot be denied benefit of increase in income for future prospects merely because a reference is pending before larger bench of Hon'ble the Supreme Court till the judgment in Rajesh's case (supra) is varied or set aside. For this reason, the insurance company cannot derive any advantage to its contention from judgment in Chikkamma's case (supra) wherein Hon'ble the Apex Court has not laid down any ratio to be followed.

So far as plea of the insurance company that admissible deduction should be 50% as the deceased was an unmarried person, Hon'ble the Supreme Court of India in ***Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil)*** *77* has held that admissible deduction would be 50% unless case pleaded by the claimants falls in exceptional circumstances. In the instant case, the deceased left behind two widows (mother and grandmother) and two minor siblings who had been looking towards the deceased for providing livelihood to the family. In view of the peculiar facts and circumstances of the instant case, deduction to the extent of 1/3 allowed by the Tribunal cannot be faulted with. In this manner, loss of dependency comes to **Rs.10,80,000.00** (5000 x 12 x 18 + 5,40,000 (50% future prospects) - 5,40,000 (1/3rd deduction).

Under conventional heads, claimants shall be entitled to Rs.25,000 for expenses on funeral, Rs.25,000/- for loss of estate, Rs.50,000/- to mother and Rs.50,000/- to siblings for loss of love and affection. The total compensation comes to **Rs.12,30,000.00** (10,80,000+25,000+25,000+50,000+50,000) and additional amount is **Rs.5,00,288.00** (12,30,000-7,29,712.). The claimants shall be entitled to get 50% of the additional amount with interest @ 7.5% per annum from the date of petition till realization except for the period of delay, in terms of award passed by the Tribunal, payable exclusively to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

06.09.2017.
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No