In the High Court of Punjab and Haryana at Chandigarh

FAO-10577 of 2014
Date of Decision: 09.11.2017

Pooja and others

---Appellants

versus

Nashim and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikas Kumar, Advocate
for the appellants
Mr. Rajesh K.Sharma, Advocate,
for respondent No. 3

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Rekha Mittal, J.

The claimants are in appeal seeking enhancement of compensation in regard to death of Surender in a motor vehicular accident that took place on 25.7.2013.

The Motor Accidents Claims Tribunal, Palwal (in short "the Tribunal") has awarded compensation to the tune of Rs. 6,11,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 4500/-
Deduction for personal expenses	1/3rd
Multiplier	16
Loss of dependency	36000 x 16=Rs,5,76,000/-
Loss of consortium to the widow	Rs. 20,000/-
Loss of love and affection and loss of estate	Rs. 5,000/-
Funeral expenses	10,000/-

Counsel for the appellants has submitted that the deceased was working as Supervisor in M/s Genius Consultants Company Limited, Delhi at a salary of Rs. 10,660/- per month, proved by Sh. Vishnu Shankar, Deputy General Manager of the aforesaid company, therefore income of the deceased is liable to be assessed in view of testimony of Vishnu Shankar PW3. It is further argued that reasoning adopted by the Tribunal to deny benefit of salary of the deceased, recorded in paras 16 to 18 is unfounded and cannot form the basis to fix income of the deceased at Rs. 4500/- per month.

Another submission made by counsel is that as the deceased was 27 years old, increase in income for future prospects to the extent of 40% is admissible in the light of latest judgment of Hon'ble the Supreme Court of India in **Special Leave Petition (Civil) No. 25590 of 2014 (National Insurance Company Limited vs. Pranay Sethi and others)** decided on 31.10.2017. The Tribunal has applied cut of $1/3^{rd}$ for personal expenses of the deceased but the application for compensation was filed by widow, minor son and parents of the deceased, held entitled to get compensation, therefore, admissible deduction would be $1/4^{th}$ in the light of judgment of Hon'ble the Supreme Court of India **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**.

Counsel representing the insurance company has supported the award of the Tribunal with the submission that adequate compensation has been assessed. It is further submitted that as father of the deceased is not proved to be dependent upon his earning, he is not to be taken into consideration for the purpose of allowing deduction qua personal expenses.

I have heard counsel for the parties, perused the paper book and the records.

The plea of the claimants is that the deceased was working as a Supervisor with M/s Genius Consultants Company Limited, Delhi in its branch at Aurangabad. The said fact is duly proved by Vishnu Shankar PW3 who produced on record series of documents Exs. P3 to P9. Counsel for the insurance company has failed to point out any materials on record to establish that testimony of Vishnu Shankar is not worthy of credence and reliance or cannot form the basis for recording a finding with regard to avocation and income of the deceased. In the light of judgments of Hon'ble the Supreme Court of India **National Insurance Company Limited vs. Indira Srivastava and others 2008(1) RCR (Civil) 359** and **Manasvi Jain vs. Delhi Transport Corporation 2014(3) RCR (Civil) 313**, the amount paid to the deceased by his employer by way of perks is to be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit.

Perusal of the salary certificate produced by Vishnu Shankar would show that the entire payment made to the deceased was available for use by family of the deceased. Under the circumstances, income of the deceased is assessed at Rs. 10,660/- per month. The deceased was 27 years old at the time of occurrence, therefore, admissible addition qua future prospects would be 40% in the light of enunciation laid down in **National Insurance Company Limited vs. Pranay Sethi and others' case (supra)**.

The Tribunal has applied multiplier of 16 though it was held that deceased was 27 years old. When examined in the light of enunciation laid down in **Smt.Sarla Verma and others' case (supra)**, the appropriate multiplier is 17.

The Tribunal has applied a cut of 1/3rd for personal expenses of the deceased. No doubt, application under Section 166 of the Motor Vehicles Act, 1988 was filed by widow, minor son and parents of the deceased. The Tribunal has held the claimants entitled to get compensation. Pooja, widow of the deceased appeared in the witness box but she has not stated specifically that father of the deceased is not earning hand much less suffering from any disability to render him dependent upon income of the deceased. Under the circumstances, widow, minor son and mother of the deceased are to be taken as dependents for computing loss of dependency, therefore, admissible deduction for personal expenses i.e. 1/3rd allowed by the Tribunal is affirmed. In view of the above, loss of dependency comes to Rs. 10,660 x 12 x17= 21,74,640/- +8,69,856(40%) =30,44,496 – 10,14,832 (1/3rd)=**Rs.20,29,664/-.**

Under conventional heads, claimants are held entitled to following compensation:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The amount comes to **Rs. 20,99,664/-** and the additional amount is **Rs. 14,88,664/-** (20,99,664/ -6,11,000). The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to widow and minor son of the deceased in the ratio of 25:75. The amount falling to share of the minor shall be deposited in a fixed deposit receipt payable to him on attaining the age of majority or for a period of three years, whichever is later. The interest accrued on the FDR shall be paid to mother for meeting expenses on his education and living.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

9.11.2017
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No