IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1220-2014 (O&M)
Date of decision: 20.09.2017

VEENA RANI & ORS ...Appellants

Versus

KARAN SINGH & ORS ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. S.P. Chahar, Advocate for the applicant-appellants.

Mr. Punit Jain, Advocate for respondent No.3.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation in regard to death of Amir Chand in a motor vehicular accident that took place on 25.02.2012.

The Tribunal assessed income of the deceased at Rs.8,000/- per month, deducted 1/4th for personal expenses and applied multiplier of 18 to compute loss of dependency at Rs.12,96,000/-. In addition, an amount of Rs.20,000/- on account of loss of consortium, loss of love and affection, mental pain and agony, Rs.10,000/- for loss of estate and Rs.20,000/- on account of funeral expenses and transportation etc. has been awarded making total compensation to Rs.13,46,000/- payable with interest @ 6% per annum from the date of petition till realization.

Counsel for the claimants would urge that the deceased was doing job in Aarti Tools and drawing salary of Rs.8,000/- per month but an additional amount of Rs.800/- per month was being paid for over time making his total income to the tune of Rs.8800/- per month. The deceased was owning a truck bearing No.HR-38-G-9060 and the document produced on record and referred to in Para No.23 of the award goes a long way to establish that the deceased had income from the truck, therefore, compensation is liable to be assessed for loss of management skills of the deceased in this regard.

Counsel has further argued that the Tribunal has not allowed benefit of increase in income for future prospects to the extent 50% in the light of judgment of Hon'ble the Supreme Court **Rajesh and others Vs.Rajbir Singh and others, (2013) 9 SCC 54**. Compensation awarded under conventional heads needs enhancement.

Counsel representing the insurance company, on the contrary, has refuted contention of the claimants for enhancement of compensation with the plea that adequate compensation had been assessed by the Tribunal. It is further argued that there is no evidence led by the claimants with regard to income from the truck owned by the deceased. In the alternative, it is submitted that the truck is available with family of the deceased, therefore, there is no question of any loss of income in this regard. He has disputed entitlement of the claimants for extending benefit of future prospects on the premise that the matter in this regard is pending consideration before a larger bench of Hon'ble the Supreme Court in view of reference made in **National Insurance Company Ltd. Vs. Pushpa,** SLP (c) No.16735 of 2014.

I have heard counsel for the parties, perused the paper book particularly the award dated 17.09.2013.

The claimants examined PW3 Dheeraj Bhardwaj proprietor of Aarti Tools Factory to prove salary certificate Ex.P3 and copy of wages register from April 2011 till February 2012 Ex.P4 to Ex.P14. The deceased was drawing salary of Rs.8,000/- per month but he was also being paid an amount of Rs.800/- per month for doing over time job. Income of the deceased from over time work cannot be said to be permanent in nature and the same would depend upon his working beyond his scheduled time. Under the circumstances, the claimants shall be entitled to loss of dependency on the basis of income at Rs.8800/- per month but the claimants shall not be entitled to benefit of increase in income for future prospects on amount of Rs.800/- of over time.

So far as plea of the claimants with regard to income of the deceased from truck HR-38G-9060, it is not plea of the claimants that the deceased himself was driving the truck and getting income. The truck is available to family of the deceased and they have to ply the truck by engaging a driver as must have been done by the deceased himself. Under the circumstances, claimants are not entitled to any compensation under this head.

The deceased was born on 17.10.1987 and was less than 25 years of age. He left behind family consisting of his widow, two minor children and mother, held to be dependent on his earnings. He would not have stagnated at the income being derived at the time of his death, had he remained alive. The mere fact that a reference is pending before a larger bench of Hon'ble the Supreme Court is not sufficient to deny the benefit of increase in income for future prospects till the judgment in **Rajesh's case (supra)** is varied or set aside. However, in view of the discussion made hereinbefore, benefit of additional income for future prospects to the extent of 50% shall be available qua salary of the deceased at Rs.8000/- per month. The Tribunal has rightly applied cut of 1/4th for personal expenses and adopted multiplier of 18. In this manner, loss of dependency comes to Rs.20,73,600/- (Rs.9000 x 12 x 18 + Rs.600 x 12 x 18).

The claimants shall be entitled to following compensation under conventional heads:-

1	Loss of consortium to the widow	Rs.1 lakh
2	Loss of love and affection to the children	Rs.1.5 lakh (to be shared equally)
3	Loss of love and affection to mother	Rs.50,000/-
4	Expenses of funeral/last rites	Rs.25,000/-
5	Loss of estate	Rs.25,000/-
	Total	Rs.3,50,000/-

The total compensation comes to Rs.24,23,600/- and the additional amount is Rs.10,77,600/- (24,23,600 – 13,46,000), payable with interest @7.5% per annum from the date of petition till realization, to minor children of the deceased except loss of consortium to the widow and loss of love and affection to mother. The share of the children shall be deposited in

Fixed Deposit Receipts till they attain the age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

20.09.2017 **(REKHA MITTAL)**
ashok **JUDGE**

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