IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.407 of 2013 (O&M)
Date of Decision: September 14, 2017

Rekha Rani and others

..Appellants

Versus

Sarwan Kumar and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. Rajesh K. Sharma, Advocate
for the appellants.

Mr. M.B. Jain, Advocate
for respondent no.3-insurance company.

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REKHA MITTAL, J.

The claimants are in appeal seeking enhancement of compensation in regard to death of Pawan Kumar in a motor vehicular accident that took place on 03.06.2010.

The Motor Accidents Claims Tribunal, Panchkula (hereinafter to be referred as the Tribunal) assessed income of the deceased at Rs.4,000/- per month, deducted 1/3rd for personal expenses and applied multiplier of 16 to compute loss of dependency at Rs.5,12,064/-. In addition, an amount of Rs.10,000/- for funeral expenses, Rs.10,000/- for loss of consortium and Rs.10,000/- for loss of estate has been awarded, making total compensation to Rs.5,42,064/- payable with interest @ 6% per annum from the date of petition till realization.

Counsel for the appellants has submitted that the deceased was looking after land measuring 30 Kanals owned by his father. He was an Astrologer and a certificate in regard to his qualification in Astrology was placed on record. The Tribunal has wrongly assessed his income at Rs.4,000/- per month which is even less than minimum wage of an un-skilled worker. Counsel further submitted that the deceased was matriculate, therefore, his income is liable to be assessed at least on the basis of minimum wage of a highly skilled person.

The Tribunal has not allowed benefit of increase in income for future prospects in the light of judgment of Hon'ble the Supreme Court ***Rajesh and others Vs. Rajbir Singh and others 2013(3) RCR (Civil) 170.*** The Tribunal has wrongly applied cut of 1/3rd in place of 1/4th as the application for compensation was filed by his widow, two minor children and parents. In addition, it is argued that mother of the deceased cannot be denied compensation even if she had been residing separate from the deceased. Counsel has further submitted that compensation awarded by the Tribunal under conventional heads needs enhancement.

Counsel representing the insurance company, on the contrary, would urge that as the matter with regard to grant of future prospects is pending consideration before a larger Bench of Hon'ble the Supreme Court in view of the reference made in ***National Insurance Company Ltd. Vs. Pushpa*** (SLP (c) No.16735 of 2014, decided on 02.07.2014) and the observations made by the Apex Court in ***Shashikala and others Vs. Gangalakshmamma and another, 2015 ACJ 1239***, claimants are not entitled to that benefit. The Tribunal has rightly assessed income of the deceased as the claimants failed to adduce tangible evidence on record with regard to avocation and income of the deceased.

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

The claimants examined Krishan Gopal PW-2 to prove that the deceased was working as an Astrologer. He has deposed that the deceased used to perform certain ceremonies at the time of Shagun, Phera ceremony and Garud Puran Paath. As per my understanding, an Astrologer does not perform the job of conducting certain ceremonies at the time of wedding or death etc. The claimants failed to adduce clear and satisfactory evidence with regard to income of deceased or his being an Astologer. The certificate Ex. P-9 has not been issued by any recognized institution nor the claimants examined any witness to prove the certificate. Under the circumstances, income of the deceased is to be assessed on the basis of minimum wage of an un-skilled worker coupled with educational qualification of the deceased. Accordingly, income of the deceased is assessed at Rs.4,800/- per month.

The deceased was less than 40 years of age. He left behind family consisting of his widow and two minor children aged 4 and 7 years. He would not have stagnated at monthly income of Rs.4,800/-, had he remained alive. The mere fact that a reference is pending before a larger Bench of the Hon'ble Apex Court, is not sufficient to deny benefit of increase in income for future prospects to the extent of 50% in the light of judgment ***Rajesh and others vs. Rajbir Singh and others 2013(3) RCR (Civil) 170***.

The Tribunal has applied deduction of 1/3rd for personal expenses of the deceased. The mere fact that mother of the deceased is residing separate is not sufficient to negate her claim for compensation. The deceased admittedly left behind his widow and two minor children as well. In the light of ratio in ***Sarla Verma and others Vs. DTC and another, (2009) 6 SCC 121*** admissible deduction would be 1/4th.

In view of the above, loss of dependency comes to Rs.10,36,800/- (Rs.4800/- x 12 x 16 = Rs.9,21,600/- + Rs. 4,60,800/-[50% towards future prospects] = Rs.13,82,400/- - Rs.3,45,600/- (minus 1/4th). Under conventional heads, claimants shall be entitled to the following compensation:-

Loss of consortium to the widow	Rs.1,00,000/-
Loss of love and affection to the minor children (to be shared equally)	Rs.1,50,000/-
Loss of love and affection to the mother	Rs.50,000/-
Funeral expenses/last rites	Rs.25,000/-
Loss of estate	Rs.25,000/-
TOTAL	**Rs.3,50,000/-**

The total compensation is Rs.10,36,800- + Rs.3,50,000/- = Rs.13,86,800/-. The Tribunal had awarded Rs.5,42,064/-, which would be deducted and the claimants would be entitled to the remaining amount of Rs.8,44,736/- payable with interest @ 7.5% per annum from the date of petition till realization. The additional amount shall be paid to minor children of the deceased in equal ratio except the amount qua loss of consortium to the widow and loss of love and affection to the mother. The amount falling to share of the children shall be deposited in Fixed Deposit Receipt till they attain the age of majority or for a period of three years, whichever is later. The interest accruing on FDRs shall be payable to mother of the children for meeting expenses of their education.

The appeal is partly allowed in the aforesaid manner.

(REKHA MITTAL)
JUDGE

September 14, 2017
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No