IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4299-2013 (O&M)
Date of decision: 22.09.2017

Royal Sundaram Alliance Insurance Co. Ltd. ...Applicant/Appellant

Versus

Manjinder Kaur and others ...Respondents

FAO-4300-2013 (O&M)

Royal Sundaram Alliance Insurance Co. Ltd. ...Applicant/Appellant

Versus

Ravinder Kaur and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate for the applicant-appellant.

Mr. S.S. Sidhu, Advocate
for respondents No.1 to 3 in FAO No.4299 of 2013
for respondents No.1 to 4 in FAO No.4300 of 2013

Mr. B.P.S. Virk, Advocate
for respondent No.4 in FAO No.4299 of 2013
for respondent No.5 in FAO No.4300 of 2013

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4299 and 4300 of 2013 as these have emerged out of the same accident leading to death of Paramjit and Jaswant Singh that occurred on 14.10.2012.

FAO No.4299 of 2013

The Tribunal has assessed loss of dependency at Rs.33,58,696/-. In addition, compensation to the tune of Rs.20,000/- awarded under conventional heads, detailed hereunder:-

Funeral Expenses	Rs.10,000
Loss of consortium	Rs.5,000/-
Loss of estate	Rs.5,000/-
Total	**Rs.20,000/-**

Counsel for the appellant-insurance company would urge that the application for compensation was filed by Manjinder Kaur-daughter, Bhupinder Singh and Kuljinder Singh sons of Jaswant Singh. One of the sons of deceased namely Bhupinder Singh appeared in the witness box and it has come on record that both sons of the deceased are gainfully employed, therefore, deduction for personal expenses of deceased is required to be 50% in place of $1/3^{rd}$. For this purpose, he has referred to judgment of Hon'ble the Supreme Court **Smt. Manjuri Bera Vs. The Oriental Insurance Co. Ltd. and anr., 2007(2) RCR (Civil) 675**. Further reference has been made to a Division Bench Judgment of Chhattisgarh High Court **Amoliram and ors. Vs. Siyarama and ors., 2013(2) AICJ 160.**

Counsel representing the respondents/claimants, on the contrary, has supported findings of the Tribunal assessing loss of dependency by applying a cut of $1/3^{rd}$ for personal and living expenses of the deceased. It is argued that Manjinder Kaur claimant is unmarried daughter of the deceased and sons of the deceased even if they are working and earning cannot be denied benefit of loss of estate. Another submission made by counsel is that compensation awarded by the Tribunal under conventional heads needs enhancement.

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

The Tribunal has taken into account monthly salary of the deceased at Rs.38,167/-. Perusal of the salary certificate Ex.P3 makes it evident that total emoluments of the deceased were Rs.38,997/- out of which statutory deduction of Rs.800/- towards income tax was being made. The tax liability on salary @ Rs.38,997/- per month comes to Rs.28,796/- per annum. The deceased was paid washing allowance of Rs.60/- and mobile allowance of Rs.250/- which are personal in nature and liable to be deducted for computing loss of dependency. In this manner, annual dependency comes to Rs.4,35,448/-.

There is no dispute between the parties with regard to multiplier adopted by the Tribunal. However, counsel for the appellant has raised a serious issue with regard to deduction for personal expenses of the deceased. Counsel for the appellant has fairly informed that Manjinder Kaur being unmarried daughter of the deceased would be held to be dependent upon earnings of late Jaswant Singh and entitled to get compensation qua loss of dependency. As has been noticed hereinbefore Bhupinder Singh, one of the sons of deceased appeared in the witness box and he asserted claim for grant of compensation. In his cross examination, he has deposed that he drives a private vehicle. Kuljinder Singh, his brother is a private driver and is also studying. Nothing has been brought on record as to what is the income of Bhupinder Singh and Kuljinder Singh much less that their father had not been providing them financial assistance. It is also not clear on record if Bhupinder Singh and Kuljinder Singh were married much less living separate from their father. Under the circumstances, it is difficult to accept contention of the appellant that Bhupinder Singh and Kuljinder Singh are not entitled to get compensation qua loss of dependency. Examined from another angle that even if Bhupinder Singh and Kuljinder Singh were not dependent on their father, they are entitled to adequate compensation qua loss of estate as they are the class-I heirs of deceased Jaswant Singh. Under the circumstances, the appellant cannot derive any advantage to its contentions from the referred authorities to find fault in findings of the Tribunal applying a cut of 1/3 for personal and living expenses of the deceased. In view of the above, loss of dependency comes to Rs.4,35,448 x 11 – 1/3rd thereof = Rs.31,93,285/-.

Compensation awarded by the Tribunal under conventional heads is inadequate and liable to be enhanced. The claimants shall be entitled to following compensation under conventional heads:-

Expenses on funeral/last rites	Rs.25,000
Loss of love and affection	Rs.1,00,000/-
Total	**Rs.1,25,000/-**

Compensation awarded by the Tribunal qua loss of consortium and loss of estate to the extent of Rs.10,000 (Rs.5000 + Rs.5000) is ordered to be set aside. The total compensation is Rs.33,18,285/- and the amount is reduced to the tune of Rs.60,411/- (33,78,696 – 33,18,285).

The insurance company shall be entitled to recover excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No.4300 of 2013

The Tribunal has assessed loss of dependency to the tune of Rs.47,65,410/-, detailed hereunder:-

Loss of monthly dependency	Rs.31,331/-
Future prospects	30%
Annual Income	Rs.4,88,760/-
Deduction for personal expenses	1/4th
Multiplier	13
Loss of dependency	**Rs.47,65,410/-** (3,66,570 x 13)

Counsel for the appellant has submitted that the Tribunal has not deducted washing allowance of Rs.60/- and mobile allowance of Rs.250/-, personal in nature while assessing loss of dependency.

Counsel representing the claimants, on the contrary, would urge that compensation assessed by the Tribunal is liable to be enhanced by allowing adequate compensation under conventional heads.

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

Perusal of the salary certificate Ex.P11 would indicate that two payments i.e. washing allowance and mobile allowance of Rs.310/- in all are personal in nature, therefore, the same is to be deducted from income of the deceased. Thus, monthly income of the deceased comes to Rs.31,704/- (32,014 – 310). As per the salary certificate, the Tribunal has deducted an amount of Rs.500/- per month for income tax. Annual loss of dependency at salary of Rs.31,704/- plus 30% thereof (future prospects) comes to Rs.4,94,582/- (41,215 x 12). The tax liability at the relevant time is calculated at Rs.31,458/- per annum. After deducting tax liability and 1/4th for personal expenses, annual income available for loss of dependency is Rs.3,47,343/-. After applying a multiplier of 13, loss of dependency comes to Rs.45,15,459/- (Rs.3,47,343/- x 13).

Under conventional heads, the claimants shall be entitled to following compensation:-

Loss of consortium to the widow	Rs.1,00,000/-
Expenses on funeral/last rites	Rs.25,000/-
Loss of love and affection, care and guidance for the children	Rs.1.5 lakh (to be shared equally)
Loss of love and affection to the mother	Rs.50,000/-
Loss of estate	Rs.25000
Total	**Rs.3,50,000/-**

The total compensation is Rs.48,65,459/- and the additional amount is Rs.80,049/- (48,65,459 – 47,85,410).

The additional amount shall carry interest @7.5% per annum from the date of petition till realization payable to widow of the deceased.

The appeal is disposed of in the aforesaid terms.

22.09.2017 **(REKHA MITTAL)**
ashok **JUDGE**

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