IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3983-2014 (O&M)
Date of decision: 29.09.2017

JAGDISH KAUR AND ANOTHER ...Appellants

Versus

AMANDEEP SINGH AND OTHERS ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Ekta Thakur, Advocate
for the appellants.

Mr. R.N. Singal, Advocate
for respondent-Insurance Company.

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<u>REKHA MITTAL, J. (Oral)</u>

The claimants are in appeal seeking enhancement of compensation in regard to death of Ajit Singh in a motor vehicular accident that took place on 14.07.2011.

The Tribunal has assessed compensation to the tune of Rs.4,87,992/- detailed hereunder:-

Loss of income	Rs.6482/- x 12 = Rs.77,784/-
Deduction for personal expenses	1/3rd (Rs.25,928)
Multiplier	7 (77,784 – 25,928 = Rs.51,856 x 7 = Rs.3,62,992/-)
Expenses on funeral	Rs.25,000/-
Loss of consortium to the widow	Rs.1 lakh.
Total compensation	Rs.4,87,992/- (3,62,992 + 1,00,000 + 25,000)

Counsel for the appellants has submitted that the deceased retired as a Mason from MES. After retirement, he was doing masonry work and earning Rs.12,000/- per month but the Tribunal has not allowed any such benefit while computing loss of dependency. Another submission made by counsel is that the Tribunal has not granted compensation for loss of love and affection to the son and loss of estate.

Counsel representing the insurance company has submitted that as the deceased was a pensioner and after his death the family is getting family pension of approximately Rs.6,000/- per month, Tribunal has wrongly extended benefit of Rs.6,482/- per month for computing loss of dependency. In addition, it is argued that there is no clear much less tangible evidence on record to prove that the deceased was working as a Mason or earning Rs.12,000/- per month from masonry work.

Counsel for the appellants, in reply, has submitted that family pension paid to family of the deceased is not amenable to deduction for assessing loss of dependency. In support of her contention she has relied upon judgment of the Madras High Court **S. Vijaya Vs. K. Karthikeyan, 2012(32) RCR (Civil) 650.** Further reference has been made to judgment of the Madhya Pradesh High Court **Vimladevi Vs. Saurabh, 2012(28) RCR (Civil) 801.**

I have heard counsel for the parties, perused the paper book particularly the award dated 06.11.2013.

Before adverting to the submissions made by counsel for the parties, it is necessary to deal with the judgments cited by counsel for the appellants. In **S. Vijaya's case (supra)** the Court has held that amount of pension paid to the deceased or family pension shall not be deducted from compensation assessed qua loss of dependency. However, it has nowhere been held that family of the deceased shall be entitled to loss of dependency qua pension payable to the deceased even if the family is getting the same pension or pension payable to family is not amenable to deduction from the pension received by the deceased, for the aforesaid purpose. Similarly, in **Vimladevi's case (supra)**, no such proposition of law, as has been sought to be canvassed by counsel for the appellants, has been laid down. In this view of the matter, I find myself unable to accept contention of the appellants that family pension paid to widow of the deceased is not amenable to deduction from the pension received by the deceased for computing loss of dependency. In this context, reference can be made to latest judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others, 2016(4) RCR (Civil) 569.**

Ranbir Singh, one of the claimants and son of the deceased appeared in the witness box to support cause of the claimants. The Tribunal in Para No.22 of the award has noted that Ranbir Singh admitted that his mother is getting family pension of approximately Rs.6,000/- per month. Indisputably, the deceased was a pensioner and drawing pension at Rs.6,482/- per month. As per the settled position in law, compensation is to be assessed with an intent to make good the loss the victim family has suffered as far as the money can do and cannot be a source of profit or bonanza or largesse. As widow of the deceased is getting family pension of Rs.6,000/- per month and if the claimants are allowed loss of dependency by considering pension of the deceased in its entirety, it would amount to giving double of the benefit to the claimants which can never be the spirit of law. Under the circumstances, the claimants shall be entitled to loss of pension only to the extent of Rs.482/- per month. Loss of dependency qua loss of pension comes to Rs.26,992/-(Rs.482 x 12 x 7 - (1/3rd for personal expenses)).

There is no challenge to findings of the Tribunal that the deceased retired from MES as a Mason. There is nothing on record suggestive of the fact that the deceased was suffering from any disability to create any obstacle for him to do masonry work after his retirement. Taking into consideration age of the deceased coupled with minimum wage available to a skilled worker at the relevant time, loss of income qua masonry work of the deceased is assessed at Rs.4500/- per month. By deducting 1/3rd for personal expenses and applying multiplier of 7, loss of dependency in regard to loss of income comes to Rs.2,52,000/- (Rs.3000 x 12 x 7). In this manner, total loss of dependency is calculated at Rs.2,78,992/-.

Compensation awarded by the Tribunal with regard to funeral expenses and loss of consortium to the widow is affirmed. The claimants shall be entitled to an amount of Rs.50,000/- for loss of love and affection to son of the deceased and Rs.25,000/- for loss of estate.

The total compensation comes to Rs.4,78,992/- and the excess amount is Rs.9,000/-. So the compensation assessed by the Tribunal is affirmed.

Disposed of accordingly.

29.09.2017 **(REKHA MITTAL)**
ashok **JUDGE**

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