IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 4101 of 2014
Date of decision: 10.08.2017

Sharda Rani and others .... *Appellants*

Versus

Rohtash and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Madan Gupta, Advocate
for the appellants

Ms Vandana Malhotra, 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 Suresh Kumar in a motor vehicular accident that took place on 19.12.2012.

The Tribunal assessed income of the deceased at Rs.10,500.00 per month, deducted 1/3 rd for personal expenses and applied a multiplier of 13 to compute loss of dependency at Rs.10,92,000.00. In addition, a sum of Rs.10,000.00 has been awarded for funeral expenses.

Counsel for the appellants has submitted that the deceased was a JBT Teacher in Government Primary School, Chandanpura, Block Pehowa, District Kurukshetra. The claimants examined Sharda Rani (PW5) and as per statement of the witness, the deceased would have drawn salary of Rs.30,634.00 per month, had he remained alive and his application for joining duty been allowed by the department. It is argued with vehemence that in the light of facts elicited in the testimony of Sharda Rani (PW5), income of the deceased is to be taken at Rs.30,634.00 per month. In addition, it is argued that benefit of increase in income for future prospects to the extent of 30% should be allowed in the light of judgment of Hon'ble the Supreme Court of India ***Smt. Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil) 77.*** Further argued that compensation awarded by the Tribunal under conventional heads needs addition and enhancement.

Counsel representing the insurance company would urge that since the year 2004, the deceased had absented from duty though it is surprising that the department did not terminate his services despite long absence of approximately eight years. It is further argued that as per evidence of Sharda Rani (PW5), in the year 2004, deceased was getting salary of Rs.10,308.00, on the basis whereof, the Tribunal has assessed his income at Rs.10,500.00 per month. Another submission made by counsel is that as the deceased had absented from duty for the past eight years, it cannot be assumed that he would have been allowed to join duty much less by allowing him all the benefits of intervening period since 2004 onwards. The last submission made by counsel is that in the given circumstances, the claimants cannot assert their right for additional income towards future prospects.

I have heard counsel for the parties and perused the paper book particularly the award impugned.

Before adverting to the submissions made by counsel for the parties, it is appropriate to recapitulate certain observations made by

Hon'ble the Supreme Court of India in *Sarla Verma*'s case (supra) wherein the Court culled out certain principles to bring uniformity and consistency to arrive at just compensation. A relevant extract from the observations reads as follows:-

> "8. The lack of uniformity and consistency in awarding compensation has been a matter of grave concern. Every district has one or more Motor Accident Claims Tribunal/s. If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system. We may refer to the following observations in Trilok Chandra :
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> > "We thought it necessary to reiterate the method of working out `just' compensation because, of late, we have noticed from the awards made by Tribunals and Courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realized that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused."
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> > Compensation awarded does not become `just compensation' merely because the Tribunal considers it to be just. For example, if on the same or similar facts (say deceased aged 40 years having annual income of 45,000/-leaving him surviving wife and

child), one Tribunal awards Rs.10,00,000/- another awards Rs.5,00,000/-, and yet another awards Rs.1,00,000/-, all believing that the amount is just, it cannot be said that what is awarded in the first case and last case, is just compensation. Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions. While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. In Susamma Thomas, this Court stated :

"So the proper method of computation is the multiplier method. Any departure, except in exceptional and extra-ordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation."

Reverting to the case at hand, the deceased absented from duty in the year 2004 and did not resume duty before he unfortunately died in a motor vehicular accident. The mere fact that the deceased submitted an application to the department permitting him to join duty few months before his death is not sufficient to uphold plea of the claimants that either his salary is to be taken at Rs.30,634.00 per month or increase towards future prospects should be allowed. The Tribunal has taken a very practical and reasonable view assessing income of the deceased at Rs.10,500.00 per month on the basis of his salary in the year 2004 and minimum wage of a casual labour.

There is nothing on record suggestive of the fact that the deceased engaged himself in an occupation during his absence from the department. This apart, Service Rules do not permit a government employee to do any commercial activity without permission of the department. Under the circumstances, income assessed by the Tribunal cannot be faulted with.

The Tribunal assessed loss of dependency by deducting 1/3rd for personal expenses of the deceased. The application for compensation was filed by the widow, two children and mother of the deceased, held to be dependent upon earning of the deceased. The admissible deduction, under the circumstances, would be ¼th. After allowing deduction to the extent of 1/4th, loss of dependency comes to **Rs.12,28,500.00** (10,500 x 12 x 13 – ¼th). Under conventional heads, the claimants shall be entitled to following compensation:-

Loss of consortium to the widow	Rs.1,00,000.00
Loss of love and affection, care and guidance to the children	Rs.1,50,000.00
Loss of love and affection to the mother	Rs.50,000.00

Expenses on funeral	Rs.25,000.00
Loss of estate	Rs.25,000.00

Total compensation comes to **Rs.15,78,500.00** and additional amount is **Rs.4,76,500.00** which shall carry interest @ 7.5% per annum from the date of petition till realization. The additional amount except compensation for loss of love and affection to children and mother of the deceased shall be payable to widow of the deceased. The same shall be invested in a fixed deposit receipt for a period of three years.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

10.08.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No