IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5394 of 2013
Date of Decision.19.09.2017

Smt. Savita and others ....Appellants

Vs

Pala Ram and others ....Respondents

Present: Mr. Harish Nain, Advocate
for the appellants.

None for respondent No.1.

Mr. R.K. Saini, Advocate
for respondent No.2.

Mr. Sanjeev Kodan, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal is for enhancement of compensation for death of a male aged 50 years in a road accident occurred on 8.7.2012. The deceased was driving Tata-1109 vehicle bearing registration No.PB-10DM-5317 and when he reached 3-4 kms towards Narwana from Village Ujhana, Tehsil Narwana on Khanori Road, one Eicher vehicle bearing registration No.HR-56A-0580 driven rashly and negligently by respondent No.1 came from opposite side and while crossing struck with the vehicle driven by the deceased. As a result of the impact, deceased suffered multiple grievous injuries and died at the spot. An FIR bearing No.95 dated 9.7.2012 under Section 279 and 304-A was registered at Police Station Garhi, District Jind. The claimants are widow, two children and mother. The deceased was stated to be doing transport business and earning ₹20,000/- per month.

The Tribunal while assessing the compensation took the income of the deceased as ₹6000/- per month, deducted 1/3rd of the same towards personal expenses and applied a multiplier of 13 to assess the loss of dependency as ₹6,24,000/-. It also provided ₹20,000/- towards loss of consortium and loss of love and affection, ₹5000/- towards loss of estate and ₹25,000/- for funeral expenses, thus, in total, a sum of ₹6,74,000/- was awarded with interest @9% from the date of institution of the petition till final realization.

Mr. Harish Nain, learned counsel appearing on behalf of the appellants submits that the Tribunal has erred in taking the income of the deceased as a labourer to the tune of ₹6000/- per month. The deceased was owner of Tata 1109 vehicle and supporting a family of four members, therefore, he must have earning at least ₹15,000/- per month. It also erred in making a deduction of 1/3rd towards personal expenses whereas it should have been 1/4th. The amounts provided towards loss of consortium, loss of love and affection, loss of estate are on meager side and nothing has been provided towards loss of future prospects, thus, urges this Court for enhancement of compensation by modifying the award.

On the contrary, learned counsel appearing for respondent Nos.2 and 3 submits that the award passed by the Tribunal is perfectly legal and justified and there is no scope for further enhancement, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book. In the absence of any documentary proof with regard to income of the deceased, the Tribunal rightly took the income of the deceased as ₹6000/- per month. In the grounds of appeal, it has been averred that the registration certificate in respect of Tata-1109 shall be shown at the time of hearing to prove the ownership of the aforementioned vehicle in the name of the deceased but during the course of arguments, learned counsel for the appellants was unable to do so despite a query raised by the Court in this regard. In the absence of the same, the plea of the counsel for the appellants falls flat.

However, the Tribunal has erred in making a deduction of $1/3^{rd}$ towards personal expenses whereas it should have been $1/4^{th}$. The multiplier of 13 as adopted by the Tribunal is correct. Therefore, I will take the income of the deceased as ₹6000/- per month, make a deduction of $1/4^{th}$ and adopt a multiplier of 13 to assess the loss of dependency as ₹7,02,000/-. I will further add to it ₹1 lacs for loss of consortium to the wife, ₹50,000/- each to the minor children and mother, ₹10,000/- for loss of estate and ₹25,000/- for loss of funeral expenses.

However, as regards the increase in income as future prospects, the Hon'le Supreme Court in the ratio decidendi culled out in the judgment rendered in ***Chikkamma and another Vs. Parvathama and another*** passed in Civil Appeal No.3409 of 2017 decided on 28.02.2017 has refused to grant claim for future prospects with regard to self employed person, owing to the fact that the issue with regard to award of future prospects of a self-employed person is pending before a larger Bench of Hon'ble Supreme Court. The relevant paragraph 9 of the same reads as under:-

> *"9. Taking into account the fact that the deceased was a self employed person and also as the question with regard to award of future prospects of a self employed person is presently pending before a larger Bench of this Court and as some enhancement of compensation ha already been made by us, we are of the view that in the facts of the present case, the*

claim for future prospects ought not to be gone into by us. The said claim, therefore, is refused.

In view of the ratio decidendi culled out by Hon'ble Supreme Court in ***<u>Chikkama's case</u>*** (supra), I will constrain myself to award any amount for future prospects at this stage, for, the aforementioned issue is pending adjudication before the larger Bench of Hon'ble Supreme Court.

In all, the total compensation payable shall be ₹9,87,000/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till realization. The liability shall remain the same as has already been determined by the Tribunal. The enhanced amount shall be distributed amongst the claimants in the ratio of 2:2:2:1 i.e. the mother will get half of the share of other claimants.

The award stands modified and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

September 19, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes