IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 624 of 2013 (O&M)
Date of Decision:- 13.11.2017

Todi Singh & Anr. .... Appellants

Versus

Rajbir & Ors. .... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Shakit Kaushik, Advocate, for
Mr. Hari Om Attri, Advocate, for the appellants.

Mr. Satpal Dhamija, Advocate, for respondent No.3.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed by the legal heirs of Kamlesh, who lost her life in a motor vehicular accident that occurred on 04.10.2010. The fact regarding involvement of offending vehicle No. HR-46-B/6989 is not in dispute. The issue of rash and negligent driving of the offending vehicle is also not disputed. The deceased lost her life as a result of the injuries suffered in the accident is also not disputed. The only dispute raised in the appeal is that the amount awarded of ₹3,80,000/- along with interest @6% per annum in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 is on the lower side and needs to be enhanced.

The Motor Accident Claims Tribunal, Faridabad (for short, 'the Tribunal') vide its award dated 07.01.2012, took the notional earning of the deceased as ₹3000/- per month, thereafter 1/3rd deduction was made for self-expenses and a multiplier of 15 was applied. In the amount awarded of ₹3,80,000/-, ₹10,000/- was awarded for loss of love and affection and ₹10,000/- for last rites.

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

Learned counsel for the appellants argued that Rs.3000/- notional income assessed by the Tribunal is on the lower side. The accident occurred in year 2010. He further argued that only Rs.20,000/- has been awarded under the Conventional Heads. No amount has been awarded for loss of estate and loss of consortium.

Learned counsel for the insurance company resisted the enhancement and argued that the claimants have failed to substantiate their claim that the deceased was earning Rs.6,000/- per month by doing house-hold work in two houses. He further contended that no evidence worth reliance was produced. He argued that no amount for loss of love and affection should have been awarded.

Learned counsel for the appellants could not raise any serious objection to the fact that the claimants failed to substantiate their claim that deceased was earning Rs.6000/- per month. Be that as it may, the role of the deceased as a house-maker has not been disputed by the either of the parties.

The Hon'ble Apex Court in ***Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others, 2015 (4) SCC 237***, has held that the contribution of a house-maker cannot be underestimated and it is very difficult to equate her contribution in the monetary terms. The house-maker not only does the duties of a house-wife but also performs her matrimonial duties.

Keeping in view the above decision and a fact that a house wife performs her duty not by the clock but 24 x 7. She is not working for any monetary benefits but it is her affection and love for family which keeps her going. Keeping in view the said facts, the notional earning of the deceased is assessed as Rs.4500/- per month.

The Tribunal erred in making 1/3rd deduction for self-expenses in the facts of the present case. In case where the notional income of the house-wife is considered, in that case no deduction for self-expenses is to be made. This Court relying upon a decision of Hon'ble the Apex Court in case of Arun Kumar Aggarwal and another Versus National Insurance Company and others (2010-3) 159 PLR 428 (SC) in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others,*** Vol. CLXXII (2013-4) 329, has held as under:

> *"15. After the decision in Lata Wadhwa's case (supra),t he notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."*

In the above decision, it has been laid down that in case of death of house-wife, since it is the notional income which is to be taken into account as her services not only include rearing the children but also perform all matrimonial obligations. In such circumstance, 1/3rd deduction is not warranted.

Loss of dependancy is recalculated applying the multiplier of 15 as applied by the Tribunal.

Rs. 4500 x 12 x 15 = Rs. 8,10,000/-.

The contention raised by the learned counsel for the appellants with regard to conventional Heads is no longer *res integra.* Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors. ,*** SLP (Civil) 25590 of 2014, decided on 31.10.2017 held that amount of ₹70,000/- is to be awarded under the Conventional Heads i.e. ₹15,000/- for funeral expenses; ₹15,000/- for loss of estate and ₹40,000/- for loss of consortium.

Hence, the amount awarded under conventional heads i.e. ₹20,000/- is enhanced to Rs.70,000/-.

Accordingly, the award dated 07.01.2012 is modified to the extent that amount awarded of ₹3,80,000/- is enhanced to ₹8,80,000/-. The appellants shall be entitled to the enhanced amount along with interest @6% per annum from the date of filing of the claim petition till realisation.

The appeal is partly allowed in the aforesaid terms.

November 13, 2017 **(AVNEESH JHINGAN)**
tripti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No