IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7731 of 2014 (O&M)
Date of Decision: February 21, 2017

Kuljit Kaur and another

..Appellant(s)

Versus

Ravi Kumar and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Atul Jain, Advocate
for the appellants.

Mr. Anil Kumar Spehia, Advocate
for respondent nos.1 & 2.

Mr. M.B. Jain, Advocate
for respondent no.3-insurance company.

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<u>ANITA CHAUDHRY, J.</u>

This is the claimants' appeal seeking enhancement in the award dated 16.11.2013, passed by the Motor Accident Claims Tribunal, Kapurthala.

Nirmal Singh deceased died in an accident in May, 2010. The claimants were the widow, two minor children and the mother. The Tribunal took the annual income to be Rs.51,120/- and made a deduction of 1/3rd and applied the multiplier of 16 and calculated the compensation and awarded Rs.20,000/- for the funeral expenses and Rs.20,000/- for other rituals. A sum of Rs.25,000/- was awarded for loss of consortium to the widow and apportioned the compensation with a further order of deposit of the share of the minor in the FDR.

The counsel for the appellants had relied upon ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) SCC (Civil) 315, Amrit Bhanu Shali and others Vs. National Insurance Co. Ltd. and others 2012(4) RCR (Civil) 343, Rajesh and others Rajbir Singh and others 2013(3) RCR (Civil) 170, Sandeep Sharma Vs. Baljeet Kaur and others, DOD 05.11.2014 (P&H), Pirthi Singh and another Vs. Asri and others, FAO No.5442 of 2009, DOD 18.03.2014 (P&H), FAO No.7517 of 2014, DOD 18.01.2017 (P&H), Tirath Kaur and another Vs. Jaswant Singh and others 2016(4) RCR (Civil) 227, National Insurance Co. Ltd. Vs. Krishna Devi and others, FAO-1194-2014, DOD 03.03.2014 (P&H), Indra Devi and others Vs. Ashok Kumar and others FAO-7517-2014, DOD 18.01.2017 (P&H), Babli and others Vs. Suresh and another 2016(4) RCR (Civil) 220 and Vimal Kanwar and others Vs. Kishore Dan and others 2013(2) RCR (Civil) 945*** and has made three fold submissions and had urged that each child was entitled to Rs.1 lac for loss of love and affection and an addition towards future prospects should have been made and the deduction of 1/3rd was wrongly made, which should have been 1/4th.

The submission on the other hand is that there was no evidence regarding the income and no record had been maintained and the claimants had tendered a copy of the notification showing the minimum wages payable and when the minimum wages have been taken then no addition towards future prospects should be made as the matter is under consideration with the Larger Bench of the Apex Court. It was urged that in ***Shashikala and others Vs. Gangalakshmamma and another (2015) 9 SCC 150*** a sum of Rs.1 lac was awarded towards loss of love and affection to all the minor children and not one lac for each child. Reliance was also placed upon ***Smt. Savita and others Vs. Satpal and others Vol.CLXXX-(2015-4) PLR 854, Smt. Babli and another Vs. Dalip Singh etc. FAO No.65 of 1997, DOD 03.02.2016 (P&H), New India Assurance Co. Ltd. Vs. Smt. Shanti Pathak and others 2007(3) RCR (Civil) 593***.

The factum of Nirmal Singh dying in the accident is not in dispute. He was stated to be an agriculturist and running a dairy farm but no evidence was produced, no Jamabandi was placed on record, therefore, the minimum wages were rightly taken at Rs.4,260 per month and deduction of 1/3rd was made considering the number of claimants. The deceased had left behind two children and a widow and the claim was filed also on behalf of the mother. It was not disclosed whether father of Nirmal had died, therefore, deduction of 1/3rd was rightly made and the income was calculated at Rs.5,45,280/-. No addition needs to be made towards future prospects as the matter has been referred to the Larger Bench. Regarding addition of future prospects to the annual income, references have been made in different cases to the Larger Bench for finally deciding the point in view of the divergent. It will not be possible for the insurance company to make recovery later. The Apex Court in Pushpa's case (supra) had stayed the recovery beyond Rs.20 lacs on the plea taken by the insurance company, which was the amount towards future prospects. Therefore, no addition is made for future prospects but some addition has to be made as the amount awarded on miscellaneous heads is meagre.

I would add Rs.5,000/- more for funeral expenses and Rs.75,000/- for loss of consortium. A sum of Rs.1 lac is added for loss of love and affection for both the minor children and a sum of Rs.10,000/- is added for transportation etc. The total of this comes to Rs.7,35,280/-. The Tribunal had awarded Rs.6,10,280/-, which would be deducted and the remaining amount of Rs.1,25,000/- would be payable to the claimants in the same ratio as was allowed by the Tribunal to the claimants with interest @ 6% per annum from the date of filing of the appeal i.e. 05.08.2014 (there was delay in refiling the appeal) till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 21, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No