IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 9865 of 2014 (O&M)
Date of decision: 02.08.2017

Rajpali and others .... *Appellants*

Versus

Devender alias Bhola and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Subhash Rana, Advocate for
Mr. Sanjeev Kumar Panwar, Advocate
for the appellants

Mr. Vikas Kumar, Advocate
for respondent No. 2

Mr. Amar Mittal, Advocate for
Mr. A S Sidhu, Advocate
for respondent No. 3

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Rekha Mittal, J. (Oral)

The claimants are in appeal seeking enhancement of compensation in regard to death of Harpal in a motor vehicular accident that took place on 05.08.2013.

The Motor Accidents Claims Tribunal, Palwal (in short, 'the Tribunal') has assessed income of the deceased at Rs.4,500.00 per month, deducted 1/3rd for personal and living expenses, adopted a multiplier of 14 to compute loss of dependency to the tune of Rs.5,04,000.00, to be paid to the widow, minor son and father of the deceased, whereas major sons of the deceased namely Sunil Kumar and Parvinder have been denied compensation. In addition, the Tribunal has awarded a sum of Rs.20,000.00

for loss of consortium and loss of love and affection to the widow, Rs.10,000.00 on account of loss of estate and Rs.5,000.00 for funeral expenses etc. making total compensation to the tune of **Rs.5,39,000.00**, payable with interest at the rate of 9% per annum from the date of petition till realization.

Counsel for the claimants would contend that the deceased was an agriculturist and doing business of dairy farming, earning Rs.15,000.00 per month. The Tribunal has wrongly held that Sunil Kumar and Parvinder, major sons of the deceased were not dependent upon him as there is no evidence on record that they were gainfully employed. After considering Sunil Kumar and Parvinder as dependent upon earning of the deceased, admissible deduction would be $1/4^{th}$ in place of $1/3^{rd}$. The Tribunal has committed an error by denying benefit of increase in income for future prospects to the extent of 30%. In addition, it is argued that compensation awarded under conventional head needs re-look and enhancement.

Counsel representing the Insurance Company has supported the award with the submission that compensation awarded by the Tribunal is adequate, just and reasonable. Sunil Kumar and Parvinder have not preferred any appeal and they are *pro forma* respondents in the appeal, therefore, they are not entitled to get compensation. The claimants are not entitled to benefit of increase in income for future prospects as the matter with regard to future prospects is pending consideration before a larger Bench of Hon'ble Supreme Court of India in view reference made in ***National Insurance Company Limited v. Pushpa*** *(SLP (c) No. 16735 of 2014, decided on 02.07.2014)* and the observations made by the Apex Court in ***Shashikala and others v. Gangalakshmamma and another, 2015 ACJ***

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

Sunil Kumar, one of the claimants appeared in the witness box and reiterated version of the claimants with regard to avocation and earning of the deceased. However, his testimony in this regard does not find corroboration from any independent source much less documentary evidence. The Court cannot ignore that the claimants generally have the tendency to inflate figures of income of the deceased to justify their claim for enhanced compensation. In absence of any tangible evidence on record with regard to avocation and income of the deceased, the Court has to rely upon the minimum wage fixed by the State of Haryana and available in August 2013. Taking into consideration the notification issued by the State of Haryana in this regard, income of the deceased is assessed at Rs.5,340.00 per month. Had the deceased remained alive, he would not have stagnated at that income particularly in the circumstances that there is nothing on record to suggest that he was suffering from any ailment which was likely to affect his future prospects.

The mere fact that the matter with regard to grant of future prospects is pending consideration before a larger Bench is not sufficient to deny said benefit till judgment in ***Rajesh and others v. Rajbir Singh and others (2013) 9 SCC 54*** is varied or set aside.

The claimants are entitled to benefit of increase in income for future prospects to the extent of 30% as the deceased was more than 40 years old.

The Tribunal has allowed deduction for personal and living expenses to the extent of 1/3rd by denying compensation to major sons of the deceased. Sunil Kumar, one of the major sons of the deceased appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.PW2/A. A relevant extract from para 2 of his affidavit reads as follows:-

> "We all were fully dependent upon the income of my deceased father Harpal and he used to contribute a sum of Rs.12,000.00 for household expenses and we were living a happy life and had good status in the society. But due to unfortunate and untimely death of my father, we all are living in a miserable condition and are still under shock and trauma. My mother has lost her husband in her young age. I as well as my brothers i.e. petitioners No. 3 and 4 have also lost father at very early and unfortunate stage and our future and education has become in dark. My grand father i.e. petitioner No. 5 has also lost his son in his old age."

The witness was cross examined by counsel representing the respondents before the Tribunal but no such fact has been elicited in his cross examination that Sunil Kumar and Parvinder, major sons of the deceased were working and earning. No evidence has been adduced by the respondents to controvert plea with regard to dependency of the claimants including Sunil Kumar and Parvinder upon Harpal (since deceased). Under the circumstances, findings of the Tribunal denying benefit of compensation to Sunil Kumar and Parvinder cannot be allowed to sustain and liable to be rejected.

Since all the claimants were dependent on earning of the deceased, admissible deduction shall be 1/4th in place of 1/3rd. In this manner, compensation payable to the claimants comes to 5340 x 12 x 14 = 8,97,120 + 2,69,136 (30% F.P) = 11,66,256.00 – 2,91,564 (¼th deduction) =

Rs.8,74,692.00. Under conventional heads Smt. Rajpali, the widow is awarded Rs.1,00,000.00 for loss of consortium. The sons of the deceased are awarded a sum of Rs.2,25,000.00 lacs (to be shared in equal share) for loss of love and affection, care, guidance and protection of their father. The claimants are awarded an amount of Rs.25,000.00 for funeral expenses and another sum of Rs.25,000.00 for loss of estate.

In view of the above, total compensation comes to **Rs.12,49,692.00** and additional compensation is **Rs.7,10,692.00**. The Additional amount shall carry interest at the rate of 7.5% per annum from the date of filing of the petition till realization. As no compensation was paid to Sunil Kumar and Parvinder by the Tribunal, 50% of the amount in equal share shall be payable to Sunil Kumar and Parvinder and remaining 50% shall be paid to widow of the deceased. The additional amount to be paid to the claimants in the aforesaid terms shall be deposited in a Fixed Deposit Receipt in a nationalized Bank for a period of three years.

Allowed in aforesaid terms.

(Rekha Mittal)
Judge

02.08.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No

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