IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No. 1062 of 2002
Date of decision: 15.05.2018

Mohinder Kaur and others .... *Appellants*

Versus

Karnail Singh and others ....*Respondents*

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

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Present: Mr. Raman Sharma, Advocate
for the appellants

Mr. G D Gupta, Advocate
for respondent No. 3

-.-

Rekha Mittal, J. (Oral)

As the appeal has been preferred by the claimants seeking enhancement of compensation and insurance company has been held liable to pay compensation without any right of recovery, service of respondent No. 2 is dispensed with.

The claimants are in appeal seeking enhancement of compensation on account of death of Lakhvir Singh in a motor vehicular accident that took place on 26.03.1997.

The Tribunal has awarded compensation of Rs.2,48,400.00, detailed hereunder:-

Monthly income of the deceased	Rs.2,072.00
Deduction for personal expenses	1/3rd
Multiplier	15
Loss of dependency	Rs.2,48,400.00

Counsel for the appellants would argue that in view of statement of Savinder Singh (PW4), a co-worker with the deceased, income of the deceased is liable to be assessed at Rs.4,700.00. The claimants are entitled to addition in income for future prospects at the rate of 40%, deduction for personal expenses 1/4th and multiplier of 17 for computing loss of dependency. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported assessment of income by the Tribunal in view of findings recorded in paras 11 and 12 of the award. It is argued with vehemence that in the light of testimony of Sushil Kumar (PW3), an employee of Punjab Water Supply and Sewerage Board, the Tribunal has rightly assessed income of the deceased at Rs.2,072.00 per month as against Rs.4,700.00 per month deposed by Savinder Singh (PW4), whose testimony in this regard is not based upon any documentary evidence.

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

As has been noticed hereinbefore, the Tribunal has assessed income of deceased at Rs.2,072.00 per month, on detailed consideration of testimonies of Sushil Kumar (PW3) and Savinder Singh (PW4). Counsel for the insurance company is right in his submission that testimony of Savinder Singh (PW4) that a Pump Operator was entitled to salary of Rs.4,700.00 per month in the year 1997 cannot form the basis for assessing income of deceased at that rate particularly under the circumstances that the deceased was not a regular employee. In this view of the matter, findings of the Tribunal assessing income of the deceased are liable to be affirmed and ordered accordingly.

The deceased was born on 28.01.1967 and more than 30 years of age at the time of occurrence. As he was less than 31 years of age, admissible multiplier would be 17. The claimants shall be entitled to benefit of increase in income for future prospects at the rate of 40%.

The Tribunal has allowed deduction for personal expenses to the extent of 1/3rd. As application for compensation was filed by the widow, two minor children and mother of the deceased, in the light of judgment of Hon'ble the Supreme Court ***Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil) 77,*** admissible deduction for personal expenses would be 1/4th. In this view of the matter, loss of dependency comes to **Rs.4,43,823.00** (Rs.4,22,688.00 *i.e.* Rs.2,072.00 x 12 x 17 + Rs.1,69,075.25 (40% future prospects) – Rs.1,47,940.00 (1/4th deduction).

Under conventional heads, claimants shall be entitled to Rs.70,000.00, in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270***, detailed hereunder:-

Loss of consortium to widow	Rs.40,000.00
Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation comes to Rs.5,13,823.00 (Rs.4,43,823.00 + Rs.70,000.00) and additional amount is Rs.2,65,423.00 (Rs.5,13,823.00 – Rs.2,48,400.00, payable with interest at the rate of 7.5% per annum from the date of petition till realization to widow of the deceased, to be invested in fixed deposit for a period of three years and interest accruing thereon shall be payable to widow to meet day-to-day expenses of the family.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

15.05.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No