IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No. 400 of 1997 (O&M)
Date of decision: 29.05.2018

Jasbir Kaur and others .... *Appellants*

Versus

Ved Parkash and others ....*Respondents*

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

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Present: Mr. Harkirat Singh Sandhu, Advocate
for the appellants

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

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Rekha Mittal, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Gurdeep Singh in a motor vehicular accident that took place on 12.11.1993.

The Tribunal has awarded compensation of Rs.2,81,500.00, rounded off to Rs.2,82,000.00, detailed hereunder:-

Monthly income of the deceased	Rs.2,000.00
Deduction for personal expenses	1/3rd
Multiplier	17
Loss of dependency	Rs.2,72,000.00
Funeral expenses	Rs.2,000.00
Loss of consortium	Rs.5,000.00
Loss of estate	Rs.2,500.00

Counsel for the appellants would urge that income of the deceased assessed by the Tribunal is on lower side and needs enhancement.

To substantiate his contention, it is argued that as per statement of Jasbir Kaur, widow of the deceased, Gurdeep Singh was a Tractor Mechanic and running a shop at Khizrabad having income of Rs.2,000/- to Rs.2,500/- per month. Yunus (PW2) has deposed that Gurdeep Singh was his partner in Tractor repairing shop situated at Khizrabad and he was earning Rs.5,000/- to 6,000/- per month. As such, income of deceased is liable to be assessed on the basis of testimonies of aforesaid witnesses. In addition, it is argued that claimants are entitled to addition in income for future prospects and adequate compensation under conventional heads.

Counsel representing the insurance company has supported assessment of income by the Tribunal with the submissions that as per plea of claimants in the application for compensation, deceased was earning Rs.2,000/- per month.

I have heard counsel for the parties, perused the paper book and copy of the award supplied during the course of hearing.

The Tribunal, in paras 13 to 15 under issue No. 3 has discussed details qua assessment of compensation including income of the deceased. Jasbir Kaur has reiterated that Gurdeep Singh was a Tractor Mechanic and running a shop at Khizrabad. Her testimony has been duly corroborated by Yunus (PW2). In the application for compensation, it is averred that income of the deceased was Rs.2,000.00 per month. When the case is examined in the light of notification issued by the State of Haryana coupled with the evidence on record that Jasbir Kaur and Yunus (PW2) have made contradictory statement with regard to income of deceased when otherwise plea of the claimants is not supported by any documentary evidence in given circumstance, I do not find any reason to interfere in assessment of income by the Tribunal and the same is accordingly affirmed. However, the claimants shall be entitled to addition in income for future prospects at the rate of 40%. Multiplier and deduction for personal expenses allowed by the Tribunal are correct and affirmed. In this view of matter, loss of dependency is calculated at **Rs.3,80,800.00** [Rs.4,08,000.00 i.e. Rs.2,000 x 12 x 17 + Rs.1,63,200.00 (40% future prospects) – Rs.1,90,400.00 (1/3rd 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 amount comes to Rs.4,50,800.00 (Rs.3,80,800 + Rs.70,000.00) and additional amount is Rs.1,68,800.00 (Rs.4,50,800.00 – Rs.2,82,000.00) payable with interest at the rate of 7.5% per annum from the date of petition till realization to widow of the deceased.

Counsel for the appellants would urge that even if licence possessed by driver of the offending vehicle was not found to be valid, the insurance company cannot be exonerated of liability to pay compensation to the claimants. Further argued that the insurance company, at best, can press for right of recovery against the insured after payment to claimants.

Contention raised by Counsel for the appellants with regard to liability of the insurer to pay compensation to the claimants is meritorious when the case is examined in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Swaran Singh & Ors,*** 2004 **(2) RCR (Civil) 114** and ***Pappu and others v. Vinod Kumar Lamba and***

another, 2018 (1) PLR 425. The insurance company cannot be altogether exonerated of liability to pay compensation merely because licence possessed by the driver is not valid. The insurance company has an obligation to pay compensation to the claimants but it shall be entitled to recover the same from the insured by filing an appropriate application before the Tribunal. In this view of the matter, findings recorded by the Tribunal exonerating the insurance Company are modified in the aforesaid terms.

For the foregoing reasons, the appeal is partly allowed. The claimants are entitled to get entire compensation from the insurer but the insurance company shall have the right of recovery against the insured after discharging its liability qua the claimants. No order as to costs.

(Rekha Mittal)
Judge

29.05.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No