IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC No.30-CII of 2001 in/and
FAO No.1850 of 1998
Date of decision:22.10.2018.

Surjit Kaur and another

...Appellants

Versus

Ram Pal and othrs

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. J.B.S. Gill, Advocate for the appellants.

Mr. Deepak Suri, Advocate for respondent No.2/HRTC.

LISA GILL, J.

This appeal has been filed by the appellants/claimants seeking enhancement of the compensation awarded to them by the learned Motor Accident Claims Tribunal, Chandigarh (`Tribunal' for short) vide award dated 05.05.1998 on account of death of Nirvair Singh in a motor vehicle accident on 09.02.1995. Cross objections have been preferred by Himachal Roadways Transport Corporation.

The claimants, who are the parents, younger brother and sister of the deceased, filed a petition under Section 166 of the Motor Vehicles Act, seeking compensation on account of death of Nirvair Singh due to injuries received in a motor vehicle accident which took place on 09.02.1995. FIR was registered under Sections 279 and 304-A IPC at Police Station Industrial Area, Chandigarh against respondent No.1. It was pleaded that the deceased at the time of his death was a truck driver with M/s Bharat Motors Chandigarh. His monthly income was stated to be Rs.4500/-. He was 24 years old at the time of accident. Compensation was thus prayed for.

The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of offending vehicle by its driver. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality.

Learned Tribunal further assessed the age of the deceased as 24 years at the time of his death and income of the deceased as Rs.2400/- per month at that time. Deduction of 50% was effected towards the personal expenses as he was a bachelor. Dependency of the claimants has been assessed for about two years @ Rs.1200/- per month and thereafter Rs.500/- per month or Rs.6000/- per annum on the ground that the deceased would then have got married. Thus, the compensation of Rs.1,18,800/- was awarded to the claimants along with interest @ 12% per annum from the date of filing of claim petition till realisation.

Learned counsel for the appellants submits that dependency has wrongly been calculated by the learned Tribunal. Moreover, future prospects need to be afforded, besides compensation in terms of the judgment of the Hon'ble Supreme Court in <u>Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others,</u> in Civil Appeal No.9581 of 2018 decided on 18.09.2018, should also be afforded.

Learned counsel for HRTC refutes the abovesaid arguments and submits that in any case excess compensation has been afforded. Moreover, appellants No.3 and 4 cannot be treated to be dependents of the deceased. Therefore, there is no question of loss of dependency qua the respondents-appellants. It is further submitted that the accident did not take place due to the negligence of the driver of the offending bus. It is, thus, prayed that the appeal be dismissed and the cross objections be allowed.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

The deceased was involved in a motor vehicle accident which took place on 09.02.1995. FIR (Ex.P1) was registered on the same day. Post-mortem on the body of the deceased was conducted. Post-mortem report (Ex.P2) is available on record, which proves that Nirvair Singh died due to the injuries suffered by him in the said accident. Learned Tribunal has referred to the testimony of Ram Pal, the driver of the bus, respondent No.1, which was found to be in contradiction to the version put forth in his reply. It is specifically observed by the learned Tribunal that no counter-version as sought to be projected in the testimony of Rampal, was set forth in the reply. It is trite to note that claimants in the present proceedings are required to prove their case on the basis of the probabilities and preponderance of evidence and not beyond any reasonable doubt. The claimants have indeed succeeded in proving that the accident in question was caused due to the rash and negligent driving of the offending bus by respondent No.1 Ram Pal.

Income of the deceased was assessed at Rs.2400/- p.m. though it was claimed to be Rs.4500/- p.m. Learned counsel for the appellant is unable to point out any evidence on record to indicate that the deceased was earning anything more than Rs.2400/- p.m. as assessed by the learned Tribunal. Thus, the said finding is upheld. Learned Tribunal has, however, erred in arriving at the loss of dependency as Rs.1,18,800/-. There is no justification of variance after a period of two years. Income of the deceased after a deduction of 50% is assessed as Rs.1200/- per month. Future prospects at the rate of 40% have to be afforded in terms of the guidelines laid down by the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009. Multiplier of 17 has to be applied in view of the judgment of Hon'ble Supreme Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, *2009(3) RCR (Civil) 77*. Loss of dependency is thus assessed at Rs.3,42,720/-. Claimants No.3 and 4, who are the younger brother and sister of the deceased Nirvair Singh, are not proved to be dependent on the deceased. Appellants/claimants No.1 and 2 are entitled to loss of dependency. Claimants No.3 and 4 would, however, remain entitled to loss of estate and loss of consortium in terms of the judgment of Hon'ble Supreme Court in the case of Magma General Insurance Company Ltd. (supra). Keeping in view the fact that the accident in question took place in the year 1995, all the claimants are entitled to Rs.30,000/- each towards loss of consortium besides a sum of Rs.10,000/- each on account loss of estate and funeral expenses.

Appellants are, thus, entitled to compensation, which is re-worked as under:-

Sr.No.	***Heads of Claim***	
1.	Income	2400 p.m. i.e., 28,800/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	28,800+11520 (28,800x40%) = 40,320/-
3.	Income after deduction of 50% on account of personal expenses	40,320–20,160 (40,320/2) = 20,160/-
4.	Total dependency after applying a multiplier of 17	(20,160 **x**17) =3,42,720/-
5.	Loss of estate	10,000/-
6.	Funeral expenses	10,000/-

7.	Loss of consortium to claimants No. 1 to 4 @30,000/- each (Rs.30000 x 4 = 1,20,000/-	1,20,000/-
Grand Total		**4,82,720/-**

The amount of compensation already awarded to the appellant/claimant, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 05.05.1998, present appeal as well as the cross objections are disposed of.

(LISA GILL)
JUDGE

October 22, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No