IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2100 of 1998 (O&M)
Date of decision : November 28, 2018

Bimla Devi and others .....Appellants

Versus

Rajasthan State Road Transport Corporation and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gautam Kaile, Advocate for
Mr. Rajiv Sharma, Advocate
for the appellants.

None for the respondents.

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LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as the 'Tribunal') on account of death of Hem Raj vide award dated 05.11.1997.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, children and mother of the deceased filed a petition under Section 163-A of the Motor Vehicles Act seeking compensation on account of death of Hem Raj on 05.09.1995 in a motor vehicle accident caused due to rash and negligent driving of the offending Rajasthan Roadways bus bearing registration No. RJ-14-P/1826 by its driver. It was averred that Hem Raj alongwith 25-30 other persons was coming in truck bearing registration No. RJ-31/G-0101 after visiting Mandir Baba Ram Devi Ji. The truck was driven by Hem Raj. When they reached four kilometres ahead of village Baap towards Bikaner at about 11.30 a.m.

offending bus bearing registration No. RJ-14-P/1826 came from opposite side and struck against the truck driven by Hem Raj. As a result thereof, Hem Raj as well as driver of the bus died on the spot.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 05.09.1995 due to rash and negligent driving of the offending bus bearing registration No. RJ-14-P/1826 by its driver. Learned Tribunal awarded a sum of ₹2,37,400/- with interest at the rate of 12% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹1,800/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 16 was applied as the deceased was 40 years old at that time. Additionally, a sum of ₹5,000/- on account of loss of consortium was awarded besides a sum of ₹2,000/- on account of funeral expenses.

Learned counsel for the appellants submits that income of the deceased has been wrongly assessed as ₹1,800/- per month whereas the deceased was earning nearly ₹3,000/- per month. Moreover, the Tribunal has not awarded compensation on account of loss of estate. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company while refuting the arguments raised by learned counsel for the appellants submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed, thus, impugned award dated 05.11.1997 be upheld.

I have heard learned counsel for the appellants and have gone through the available file.

It is a matter of record that as per the pleadings Hem Raj (deceased) was driving a truck at the time of ill-fated accident which took place on 05.09.1995. FIR No. 99 under Sections 279, 304A, 337 IPC was registered at Police Station Baap on 05.09.1995 itself, on the statement of Vinod Kumar. It is stated in the FIR that Hemraj was driving the truck in question. The accident took place due to rash and negligent driving of the offending Rajasthan Roadways bus by its driver. Vinod Kumar (PW1) the employer of the deceased Hem Raj has clearly stated that he had employed Hem Raj to drive his truck. Learned Tribunal has negated the claim of the deceased to be a driver only on the ground that his driving licence was not placed on record. However, there is no evidence to rebut the claim of the appellants to the effect that Hem Raj (deceased) was driving the truck at the time of the accident, owned by Rajinder Kumar PW3 i.e. owner of the truck in question.

In the facts and circumstances, it is considered just and expedient to assess the income of the deceased to be ₹2,000/- per month instead of ₹1,800/- per month. In terms of Schedule II of the Act, deduction of 1/3rd has to be effected, thereby rendering income of the deceased to be ₹1333/-(2000-667). As the deceased was 40 years old, multiplier of 16 has been correctly applied by the learned Tribunal. Dependancy of the claimants is, therefore, assessed as ₹2,55,936/- (₹1333x12x16). A sum of ₹2,000/- for funeral expenses and ₹5,000/- for loss of consortium as awarded by the learned Tribunal is maintained. The claimants are also entitled to a sum of ₹2,500/- for loss of estate.

Claimants are, thus, entitled to total compensation of ₹2,65,436/- detailed as under:-

Loss of dependency (₹1333x12x16)	₹2,55,936/-
Loss of consortium	₹5,000/-
Loss of estate	₹2,500/-
Funeral expenses	₹2,000/-
Total	₹2,65,436/-

The amount of compensation already awarded to the appellants, 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.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(Lisa Gill)
Judge

November 28, 2018
rts

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