In the High Court of Punjab and Haryana at Chandigarh

FAO- 1364 of 2001
Date of Decision:6.4.2018

Nicolletta Rohtagi and another
---Appellants

vs.

Sh. Jai Parkash and others
---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sagar Aggarwal, Advocate
for the appellant
Ms. Radhika Suri, Senior Advocate with
Mr. M.S.Kanda, Advocate
for the insurance company

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Rekha Mittal, J.

The claimants are in appeal seeking enhancement of compensation on account of death of Anil Kishore Rohtagi in a motor vehicular accident that took place on 8.8.1995.

The Motor Accidents Claims Tribunal, Karnal (in short "the Tribunal") has awarded compensation of Rs. 13,13,150/-, detailed hereunder:-

Annual dependency	17,242 Canadian Dollar (Rs. 2,58,630/- per annum @ Rs. 15 per dollar)
Multiplier	5
Loss of dependency	Rs. 12,93,150/-
Funeral expenses	Rs. 30,000/-
Carrier charges	Rs. 20,000/-

Counsel for the appellants would argue that findings recorded by the Tribunal in paras 19 and 20 of the award to compute annual dependency at 17,242 Canadian Dollars are not based upon correct appreciation of the material on record and the same needs to be rectified by allowing correct computation of loss of annual dependency in Canadian Dollars and then multiplying it by Rs. 23.15/- per Dollar for the purpose of conversion. Another submission made by counsel is that the deceased was 57 years old at the time of accident and in the light of judgment of Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298,** appropriate multiplier would be 9. Claimants are entitled to adequate compensation under conventional heads.

To bring home his contention with regard to enhancement in loss of income, counsel has pointed out various documents Ex. Px4 to Px7 i.e. income tax returns filed by the deceased prior to his death and the last income tax return Ex. Px7 filed after his death in April 1996. In addition, it is argued that there is no evidence on record that deceased had retired from service as a teacher in secondary school with Toronto District Board of Education in July 1995, therefore, entire approach of the Tribunal to assess annual loss of dependency at a meager amount of 17,242 Canadian Dollars is faulty and cannot be affirmed.

Counsel representing the insurance company has supported assessment of compensation by the Tribunal with the submission that there is no clear evidence on record if the deceased was to continue in service as a teacher with the Toronto District Board of Education and upto what age. It is argued that perusal of document Ex. Px3 purported to be issued by the

Toronto District School Board under the signatures of Ellen McLean, Staffing Officer Secondary Schools does not make the picture clear if the deceased was to continue in service as a teacher even subsequent to July 31. 1995.

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

Indisputably, deceased was working in Canada till 31.7.1995. He came to India and unfortunately met with an accident resulting in his death at the spot. The claimants did not examine a witness from Canada to prove by oral and documentary evidence with regard to avocation and income of the deceased. However, Giyan Watti Rohtagi, mother of the deceased appeared in the witness box to say on oath that her son was working in Canada and earning Rs. 1,00,000/- per month. Nevertheless, her testimony in this regard does not find corroboration from documentary evidence. The claimants have placed on record certain documents Exs. P1 to P4 and Px4 to Px7 to prove income of the deceased. Counsel for the appellants has sought to rely upon Ex. Px6 , income tax return filed in April 1994 for computing loss of dependency. On the other hand, counsel for the insurance company has referred to document Ex. P2, statement of earnings and deductions for the period ending 31.12.1994. The claimants have placed on record income tax returns of the year 1992, 1993, 1994 and 1995 Exs. Px4 to Px7. In the income tax return for the year 1994, filed by the deceased showing total income of the deceased as 61,404 Canadian Dollars, there is deduction of 7237 Canadian Dollars, detailed as under:-

101	T4 EARNINGS	61275
121	INTEREST	129
150	TOT INCOME	61404
206	TOT PEN ADJ	6745
207	PEN CONTRIB	4468
208	RRSP	2000
212	DUES	769
233	TOTAL DEDS	7237
236	NET INCOME	54,167

In the same document, total tax payable is 16,115.90 Canadian Dollars i.e. TOT NREF CR 1,446; NET FED TAX 10,273.70 NET PRO TAX 5, 842.20. After deducting tax liability to the tune of 16,115.90 Canadian Dollars from the net income of 54,167 Canadian Dollars, income of the deceased per annum comes to 38,051.1 Canadian Dollars.

There is nothing on record suggestive of the fact that deceased retired form service on 31.7.1995. In the document Ex. Px3 issued by the Toronto District School Board, it has nowhere been mentioned that the deceased retired from service on 31.7.1995. A relevant extract from Ex. Px3, reads as follows:-

> "This is to state that Anil Kishore Rohtagi was a full-time teacher in secondary schools with the Toronto District Board Of Education (former Board of Education for the City of Toronto) from Octob er 15, 1990, through July 31, 1995. At the time of his death his annual salary was $65,153."

The deceased was born on 1.1.1938, therefore, he was more than 57 years old at the time of occurrence. As the deceased was in the age bracket of 56-60 years, admissible multiplier in the light of judgment in

Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298 would be 9.

Application for compensation has been filed by the widow and mother of the deceased. As per enunciation laid down in **Smt.Sarla Verma and others' case (supra)**, admissible deduction for personal expenses would be 1/3rd. However, living in Canada is comparatively expensive viz-a-viz India. Under the circumstances, interest of justice would be served if 50% is deducted for personal expenses of the deceased. As the deceased was less than 60 years of age, claimants shall be entitled to increase in income for future prospects @ 10%. In this manner, loss of dependency comes to 38,051.1 x 9 = 3, 42,459.9 + 34,245.99(10%)= 3,76,705.89 – 1,88,352.94(50%) = 1,88,352.94 Canadian Dollars. When converted into Indian currency at the rate of Rs. 23.15 per Dollar, the same comes to Rs. 43,60,370.56/- (rounded off to Rs. 43,60,371/-).

Under conventional heads, claimants shall be entitled to following compensation in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270,** detailed hereunder :-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The total compensation is **Rs. 44,30,371/-** and the additional amount is **Rs.31,17,221/-**(44,30,371-13,13,150), payable with interest at the rate of 7.5% per annum from the date of petition till realization to be shared by the claimants equally.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

6.4.2018
paramjit

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