IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 762 of 1999 (O&M)
Date of decision : December 04, 2018

Smt. Manisha Thareja and others .....Appellants

Versus

Mohmad Rauf Khan and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep Vermani, 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, Gurgaon (hereinafter referred to as the 'Tribunal') on account of death of Parveen Thareja vide award dated 02.12.1998.

It is relevant to note that the present is a case in which the file and record was burnt in the fire which took place on the premises of this Court in the year 2011.

This matter had been adjourned on request of learned counsel for the appellant on 07.11.2017 as it was noticed that copy of the claim petition available with the appellants reflected the claim petition to have been filed under Section 163A of the Motor Vehicles Act (for short – 'the Act') whereas the impugned award mentions the petition to be under Section 166 of the Act.

Learned counsel for the appellants submits that on verification it has been found that claim petition was in fact filed under Section 166 of the Act. It was only a typographical error due to which Section 163A of the Act (though corrected to Section 166 of the Act) finds mention. As per impugned award dated 02.12.1998 it is clearly mentioned that the claim petition was filed under Section 166 of the Act. I do not find any ground whatsoever to disbelieve the recital in impugned award dated 02.12.1998 to the effect that the claim petition entertained by the learned Tribunal was filed under Section 166 of the Act.

Despite the matter being called twice, none appears on behalf of the respondent - insurance company.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow and parents of the deceased filed a petition under Section 166 of the Act seeking compensation on account of death of Parveen Thareja on 06.12.1995 in a motor vehicle accident caused due to driving of the offending vehicle tanker bearing registration No. NL-02A/1547 by respondent No.1 in a rash and negligent manner. It was averred that Parveen Kumar Thareja was going from Deharaya Triaha on correct side of the road. In the meanwhile, offending tanker bearing registration No. NL-02A/1547 driven in a rash and negligent manner by respondent No. 1 came and hit Parveen Kumar. As a result thereof, he fell and received multiple injuries. He was shifted to the hospital but succumbed to his injuries. The deceased, aged 28 years was claimed to be a cloth merchant, earning a sum of ₹15,000/- per month.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 06.12.1995 due to rash and negligent driving of the offending tanker bearing registration No.

NL-02A/1547 by respondent No. 1. Learned Tribunal awarded a sum of ₹6,10,000/- 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 ₹72,306/- per annum. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 15 was applied. Additionally, a sum of ₹1,00,000/- on account of loss of consortium, transportation charges and last rites was awarded.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that there is no dispute regarding the income of the deceased assessed as ₹72,306/- per annum by the learned Tribunal on the basis of the income tax returns filed by the deceased – Parveen Kumar, however, in terms of judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increment on account of future prospects at the rate of 40% should be afforded. Multiplier of 17 should have been applied in view of guidelines laid down by the Hon'ble Supreme Court in ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77. It is further submitted that compensation under the conventional heads is meagre. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

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

There is no dispute that Parveen Kumar lost his life in a motor vehicle accident, which took place on 06.12.1995 caused due to the rash and negligent driving of tanker bearing registration No. NL-02A/1547 driven by respondent No.1. Finding of the learned Tribunal on this issue has attained finality. It is also not disputed that the deceased was 28 years old at the time of the accident.

There is further no dispute regarding income of the deceased to be ₹72,306/- per annum as assessed by the learned Tribunal on the basis of income tax returns (Ex.P4 and Ex.P13). Income of the deceased, as above is upheld. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 40% (₹28,922/-) has to be afforded, as the deceased was 28 years old at the time of accident, which takes income of the deceased to ₹1,01,228/- per annum. In view of the guidelines laid down by the Hon'ble Supreme Court in case of **Sarla Verma** (supra), deduction of 1/3rd is to be applied as number of dependants is three (3), thereby rendering income of the deceased to be ₹67485/-(101228-33743). Applying a multiplier of 17 instead of 15, dependancy of the claimants is, therefore, assessed as ₹11,47,245/- (₹67485x17). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018), appellant No. 2 i.e. daughter of the deceased is entitled to ₹40,000/- on account of loss of parental consortium and appellant No. 3 i.e. mother of the deceased is entitled to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of

₹12,97,245/- detailed as under:-

Loss of dependency (₹67485x17)	₹11,47,245/-
Loss of consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹12,97,245/-

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)
December 04, 2018 **Judge**
rts

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