Sr. No. 205

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.1616 of 2001 (O&M)
Date of Decision: 24.09.2018

Raksha Devi and others

... Appellants

Versus

State of Jammu and Kashmir, Department of Transport and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Sandeep Verma, Advocate,
for the appellants.

Mr. K.S.Cheema, Advocate,
for respondent Nos.1 and 2.

TEJINDER SINGH DHINDSA, J.(ORAL)

This is a claimants' appeal seeking enhancement of compensation.

Briefly, it may be noticed that claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs.15 lakh on account of death of Ram Kumar in a motor vehicle accident that took place on 12.12.1998.

Claimants were the widow, three minor children and aged mother of the deceased. Claimants had asserted that Ram Kumar (since deceased) had boarded a bus bearing registration No.JK-02-Y-0097 from Ludhiana and was proceeding towards Pathankot. The bus was being driven in a rash and negligent manner and on account of which an accident occurred resulting into grievous injuries to Ram Kumar who succumbed to the same.

The offending bus was stated to be owned by the Jammu and Kashmir State Road Transport Corporation.

The claim petition having been contested, the following issues were framed by the Tribunal:-

1. ***"Whether the driver of State of J&K was found driving bus No. JK-02-Y-0097 in a rash and negligent manner on 12.12.1998 resulting in the death of Ram Kumar? OPA***
2. ***Relief."***

Perusal of the award dated 09.10.2000 rendered by the Motor Accident Claims Tribunal, Hoshiarpur would reveal that findings have been returned in favour of the claimants and it has been recorded that death of Ram Kumar occurred on account of injuries suffered in an accident on account of rash and negligent driving by driver of the offending vehicle i.e. bus bearing registration No.JK-02-Y-0097.

Insofar as quantum of compensation is concerned, a total amount of Rs.2,23,000/- has been awarded and the same has been apportioned amongst the claimants as per details furnished in the award itself. The respondents in the claim petition i.e. State of Jammu and Kashmir, Department of Transport and Jammu and Kashmir State Road Transport Corporation have been held to be jointly and severally liable to make good the compensation amount.

Since the only issue involved in the instant appeal is with regard to quantum of compensation, I have heard counsel for the appellants as also counsel representing the contesting respondent Nos.1 and 2.

In the considered view of this Court, there is scope for enhancement of compensation amount awarded in favour of the claimants/appellants.

Even though claimants had asserted that Ram Kumar deceased was earning Rs.10,000/- per month by running a tea stall at Ludhiana and had even examined Sadhu Ram AW-2, Baljit Singh AW-3 and Onkar Singh AW-4 yet no concrete evidence had come forth to substantiate the monthly income of Rs.10,000/-. The statements recorded of AW-2 to AW-4 would certainly be indicative of the fact that deceased Ram Kumar was running a tea stall. Even counsel for the respondent before the Tribunal had disputed the monthly income of the deceased to be Rs.10,000/- and had claimed the same to be Rs.3000/- per month. Tribunal accordingly, accepted the income of Ram Kumar deceased as Rs.3000/- per month but for purposes of computing the compensation amount has taken the figure as Rs.2000/- after deducting Rs.1000/- which was claimed to be the rent of the shop from where the tea stall was being run. The deduction of Rs.1000/- towards rent while assessing monthly income is held to be erroneous for purpose of computing the compensation amount. The gross monthly income of the deceased ought to have been taken as Rs.3000/-, as even if rent of Rs.1000/- was being paid, it was from the monthly income itself. As such monthly income of the deceased would be taken as Rs.3000/- per month.

Concededly, there were five dependents on the deceased i.e. widow, three minor children as also aged mother. By applying the dictum laid down in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77,*** a deduction of 1/4th would be made towards personal and living expenses of the deceased.

There is no dispute with regard to the fact that age of the deceased as on the date of accident was 39 years. As per **Sarla Verma's case (supra)**, the multiplier of 15 ought to have been applied by the Tribunal to the multiplicand instead of 12. It is so directed.

The Tribunal has not awarded any addition in income towards future prospects. Keeping in view the fact that the claimants had themselves asserted that the deceased was self-employed and was 39 years of age, an increase in income towards future prospects @ 40% is awarded as per parameters laid down by the Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

Further more, the Tribunal has awarded a sum of Rs.5000/- towards loss of consortium and Rs.2000/- towards funeral expenses. Even such meager amount is enhanced to Rs.70,000/- under the conventional heads i.e. Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- for funeral expenses.

In view of the discussion above, the compensation amount is re-assessed and calculated as follows:-

Sr. No.	Head	Calculation
1.	Income Rs.3000/- p.m.	Rs.3000
2.	Addition in income @ 40% towards future prospects	Rs.1200/- 3000+1200=4200/-
3.	1/4th deduction towards personal and living expenses of the deceased	Rs.4200-1050=3150/- Rs. 3150 x 12=37,800/-
4.	Compensation after applying multiplier of 15	Rs. 37,800 x 15=5,67,000
5.	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.5,67,000+70,000= Rs.6,37,000/-

The afore-calculated enhanced compensation amount be released in favour of appellant No.1 Smt. Raksha Devi i.e. widow and natural guardian/mother of appellants No.2 and 3 and 4 along with interest @ 6% per annum from the date of filing of the instant appeal till actual realization.

Appeal is allowed in the aforesaid terms.

24.09.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No