IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO no.1777 of 2001 (O&M)
Date of Decision: 30.11.2018

Achhar Singh ...Appellant

Vs.

Sarbjeet Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vishal Gupta, Advocate, for the appellant.
Mr. Rajbir Wasu, Advocate, for respondent no.3-Insurance Co.

Amol Rattan Singh, J (Oral)

By this appeal, the appellant (claimant) seeks enhancement of the compensation of Rs.90,000/- awarded by the learned Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to be as “the Tribunal”), vide its Award dated 09.08.2000, on account of the death of Pritam Chand in a motor vehicle accident on December 12, 1996.

2. The respondents not having filed any appeal as regards the question of negligence or even against the quantum of compensation awarded, the only issue to be looked into in this appeal is as to whether the aforesaid compensation was adequate or not.

Though the age of the deceased was stated to be 45 years in the claim petition, no evidence having been led with regard thereto and the post mortem examination report having stated that he was 50 years old, that was taken to be his age.

Consequently, with no evidence led even in this appeal to show that the deceased was less than 50 years of age, as regards the age of the deceased, it is accepted as was assessed by the Tribunal, i.e. 50 years.

3. Mr. Vishal Gupta, learned counsel for the appellant, submits that the income of the deceased, as assessed by the Tribunal, was wholly erroneous @ Rs.1,000/- per month, because though the appellant-claimant had contended that it was Rs.3300/- per month, even if that could not be proved, the minimum wages of an unskilled labourer as on the date of the accident, would be Rs.1448.70 p.

He further submits that the deceased being 50 years old, a multiplier of '13' should have been applied instead of '11', even in terms of the ratio of the judgment of the Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** (2009) 6 SCC 121.

He next submits that the loss of future prospects of an increased income has also not been factored in by the Tribunal, which in terms of the ratio of the judgment of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others,** (2017) 16 SCC 680, would be 25% of the assessed income.

Lastly, he submits that hardly any compensation was awarded under the "conventional heads" with in fact only Rs.2000/- having been awarded towards funeral expenses.

4. Mr. Rajbir Wasu, learned counsel for respondent no.3, i.e. the

insurance company that had insured the “offending vehicle”, on the other hand submits that as a matter of fact, even if in terms of the law settled as per the ratio of the judgments of the Supreme Court in Sarla Verma and Pranay Sethis' cases (supra), what further requires to be seen by this Court is that the Tribunal has taken the personal expenses of the deceased to be only 1/3rd of his income, whereas in fact the appellant could not even prove that he was the adopted son of the deceased, though he has been accepted to be such by the Tribunal, with of course the alternative reasoning given by the Tribunal being that even if he is not to be accepted as such adopted son, he was still found to be nephew of the deceased, i.e. his brothers' son.

The argument therefore is that at least half the assessed income of the deceased has to be deducted towards his personal expenses, he not found to be married or having children of his own, with no firm proof led of adoption of the appellant as his son.

Though Mr. Wasu has also raised the issue of the appellant being in fact not entitled to compensation at all, that contention is to be rejected in view of the fact that, firstly, the respondents are not in appeal against the findings of the Tribunal and in any case, with it accepted by the Tribunal as per evidence led, that at least the appellant was the nephew of the deceased and therefore was his sole legal heir, with no other legal representative seen to stake a claim, that contention made by learned counsel is rejected.

Lastly, Mr. Wasu submits that the rate of interest awarded by the Tribunal on the compensation of Rs.90,000/-, i.e. 12% per annum, running from the date of filing of the claim petition till realization thereof, is highly excessive.

5. Having considered the matter, I agree with Mr. Gupta that as regards the income of the deceased, it would need to be assessed at least as per the minimum wages prescribed by the State Government for an unskilled daily wager, which as per the chart maintained in this Court was Rs. 1448.70 p., with the accident having taken place on 12.12.1996.

To that amount, in terms of the ratio of the judgment of the Supreme Court in Pranay Sethis' case (supra), as cited by Mr. Gupta, 25% is to be added by way of loss of future prospects of an increased income. That amount comes to Rs.1810/- per month, thereby bringing the annual income to be Rs.21720/- (including loss of future prospects thereof).

6. From that amount, I agree with Mr. Wasu, 50% is to be deducted on account of the personal expenses of the deceased, he having been found to be a bachelor, with no adoption deed proved before the Tribunal.

It is to be noticed here that though the Tribunal accepted the oral testimony of two witnesses that the appellant was actually adopted by the deceased, it would be difficult to accept that evidence as firm proof of such adoption, in the absence of any documentary evidence whatsoever. Therefore, I find no reason to disagree with Mr. Wasu on that aspect, though, especially in the absence of any challenge by the insurance company, I would not accept that he was not the nephew of the deceased and therefore his legal heir.

7. Consequently, taking the annual income of the deceased after deducting his personal expenses therefrom to be Rs.10860/-, a multiplier of 13 is to be applied to that amount in terms of the judgment of the Supreme Court in **Sarla Vermas'** case (supra), the deceased being 50 years old, with the total loss of income therefore coming to Rs.1,41,180/-.

To the aforesaid sum is to be added Rs.15,000/- on account of funeral expenses, i.e. Rs.13,000/- over and above what is awarded by the Tribunal.

The appellant would also be entitled to Rs.15,000/- by way of loss of estate in terms of the ratio of the aforesaid judgment, though in my opinion, he not having been proved to be the legally adopted son of the deceased, he would not be entitled to equal compensation towards loss of consortium/love and affection.

8. Hence, the compensation awardable to the appellant as calculated hereinabove, would come to Rs.1,71,180/-, i.e. Rs.81180/- over and above what was awarded by the Tribunal.

9. Mr. Wasu is also correct as regards the fact that interest @12% per annum would be highly excessive at least on the enhanced amount and therefore, on the enhanced compensation of Rs.81180/-, interest @ 7.5% per annum is ordered to be awarded, running from the date of filing of the claim petition till realization thereof.

However, as regards the interest awarded by the Tribunal on the compensation awarded by it, i.e. Rs.90,000/-, I see no reason to interfere even on the quantum of interest, in view of the fact that the respondents have not challenged the Award.

The appeal is thus allowed in the above terms.

No order as to costs.

30.11.2018 **(Amol Rattan Singh)**
vcgarg **Judge**

Whether speaking/reasoned : Yes
Whether reportable : Yes