IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2714 of 2001 (O&M)
Date of decision: 11.09.2018

Meena Kapoor @ Bala and others

....Appellants

Versus

Harmesh Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Mandeep Kaushik, Advocate for the appellants.

None for respondent No.1.

Ms. Deepali Puri, Advocate for respondent No.2.

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MAHABIR SINGH SINDHU, J.

Present appeal has been filed against the impugned Award dated 07.09.2000, passed by learned Motor Accident Claims Tribunal, Ludhiana *(for short 'the Tribunal')*, for enhancement of compensation under the provisions of Section 173 of the Motor Vehicles Act, 1988 *(for short 'the Act')* on account of death of Arun Kapoor *(for short 'deceased')*. Appellants/claimants are widow, minor daughter & son, mother and father of deceased.

(2) Appellants filed a claim petition under Section 166 of the Act before learned Tribunal with the averments that deceased, aged about 41 years, was running jewellery shop, box factory and dealing in share business. On 13.03.1998 at about 4:00 PM, he along with his wife and two minor children was going from Ludhiana to Shimla in Maruti Car bearing registration No.PB-10X-4606, which was being driven by deceased at a moderate speed on extreme left side of the road. When they reached near Fauji Dhaba, Sanawar (Dharampur), N.H.-22, District Solan, Himachal Pradesh, a bus bearing registration No.CH-01G-8123 *(for short 'offending bus'),* owned by Chandigarh Transport Undertaking, driven by respondent No.1-Harmesh Singh in a very rash and negligent manner, came from the opposite side and hit the Car. As a result thereof, deceased suffered multiple injuries and died on the spot. An FIR No.41 dated 13.03.1998, under Sections 279, 337, 304-A, IPC was registered at Police Station Dharampur, District Solan against respondent No.1. It was specifically alleged in the claim petition that the accident had taken place on account of rash and negligent driving of respondent No.1.

(3) Upon notice, both the respondents filed their separate reply and opposed the claim petition.

Respondent No.1, in his reply, admitted that he was on duty with the offending bus (CH-01G-8123) from Chail to Chandigarh and when the same reached near the turn of Hotel Namaskar, he applied the brakes, but failed on account of leakage of pressure. Consequently, in order to safeguard the passengers, he turned the bus to the right side and suddenly, car of the deceased came from the opposite side and struck with the offending bus and as a result thereof, the driver of the car died on the spot. Thus, driver of the bus claimed innocence and pleaded that he was not at fault.

Respondent No.2 filed separate reply and has taken the similar stand that of respondent No.1.

(4) On the basis of pleading of both sides, learned Tribunal has framed the following issues:-

1. *Whether deceased Arun Kapoor died as a result of rash and negligent driving of bus No.CH-01G-8123 by respondent No.1? OPP*
2. *Whether the claimants are the legal representatives of deceased Arun Kapoor? OPP*
3. *If issue No.1 and 2 are proved, whether the claimants are entitled to any compensation? If so to what extent and from which of the respondents? OPP*
4. *Whether the claim petition is bad for non-joinder of necessary parties?OPR*
5. *Relief.*

In order to prove their case, appellants examined Meena Kapoor as PW-1 and produced the documentary evidence i.e. Power of Attorney (ExP-1); Death Certificate (ExP-2); FIR (Ex.P-3); Post Mortem Report (Ex.P-4) and Income Tax Return (Ex.PX).

On the other hand, respondent No.1-Harmesh Singh appeared as RW-1, but did not produce any documentary evidence.

(5) Learned Tribunal, while deciding Issue No.1, came to the conclusion that deceased died in motor-vehicular accident on account of rash and negligent driving of the offending bus by respondent No.1 and thus, decided the same in favour of appellants.

Issue No.2 was also decided in favour of the appellants to the effect that they are the legal representatives of deceased.

Learned Tribunal, while deciding Issue No.3, has taken the annual income of the deceased as ₹ 90,000/- and after deducting 1/3rd towards his personal expenses, assessed annual dependency as ₹ 60,000/-, but still further, reduced it to ₹ 35,000/-. Taking into consideration the age of deceased as 41 years, learned Tribunal applied the multiplier of 12 and assessed the total compensation to the tune of ₹ 4,22,000/-.

Learned Tribunal decided Issue No.4 against the respondents and in favour of the appellants regarding non-joinder of the Insurance Company as party respondent.

Learned Tribunal also awarded interest @ 12% per annum from the date of filing of the petition till realization of the compensation.

(6) Learned Counsel for the appellants has made the following submissions:-

1. Learned Tribunal has wrongly made a deduction of 1/3rd from the annual income of ₹ 90,000/- of the deceased despite the fact that all five claimants/appellants were dependent on him and in view of the judgment of Hon'ble Supreme Court in ***'Sarla Verma (Smt.) and others*** *Versus* ***Delhi Transport Corporation and another, (2009) 6 SCC 121'***, the deduction could have been made to 1/4th. Also submitted that further reduction of loss of annual dependency from ₹ 60,000/- to ₹ 35,000/- is without any basis.
2. In view of the age of deceased as 41 years, the multiplier of 12 has been wrongly applied and it should be '14'.
3. No compensation has been awarded towards future prospects.
4. Nothing has been awarded towards loss of estate, loss of consortium etc.

On the other hand, learned Counsel for the respondents opposed the contention and submitted that compensation, awarded by learned Tribunal, is just and proper and does not require any interference by this Court and she prayed for dismissal of the appeal.

(7) Heard arguments from both sides and perused the paper-book.

(8) Concededly, the respondents have not challenged the impugned award either by way of a substantive appeal or cross-objections. Even before this Court also, no arguments have been raised on Issue Nos.1, 2 and 4, consequently, findings recorded by learned Tribunal on these issues are affirmed.

(9) The only point to be determined in the present appeal is:-

> *As to what should be the 'just compensation' for which the appellants/claimants are entitled in view of the facts and circumstances of the case?*

Learned Tribunal, while deciding Issue No.3, noticed that appellants have produced the Income Tax Return for the year 1996-97 (Ex.PX), showing the annual income of deceased as ₹ 97,870/-. Further observed that although, this is the solitary Income Tax Return of the deceased, but in the absence of any serious cross-examination by the respondents, considered the probable annual income of the deceased as ₹ 90,000/-. Learned Tribunal, after making a deduction of 1/3rd towards his personal expenses, assessed the loss of annual dependency as ₹ 60,000/- (Sixty Thousand). Still further, learned Tribunal observed that since appellants have not proved the fact that on account of the death of the deceased, the business which he was running has come to the halt and no income is being derived therefrom, reduced the the annual dependency to ₹ 35000/- instead of ₹ 60,000/- and relevant part of para 9 of the impugned award reads as under:-

> *"However, the claimants have produced in evidence copy of the income tax return for the year 1996-97 Ex.PX showing the total income of deceased as Rs.97870/-. Although it is a solitary return produced in evidence and it*

> *would have been better if some other returns had been proved in evidence but then this return is indicative of probable income which the deceased was having at the time of his death. Respondents have not seriously cross-examined petitioner Meena Kapoor regarding probable income of Arun Kapoor can be taken to be around Rs.90,000/- per annum, considering that he had been an income tax assessee. Out of such income he must be spending 1/3rd for himself, that takes out Rs.30,000/- from this amount leaving balance of Rs.60,000/-. While determining dependency of the claimants the fact cannot be lost sight of that. Claimants have no-where alleged or proved that as a result of death of Sh. Arun Kapoor, the business which he was doing has come to halt and no income is being derived from the same. Therefore, it is to be taken that claimants are getting income from said source. In that way, their dependency can be taken to be Rs.35,000/- per annum."*

Perusal of the extracted part of paragraph 9 apparently makes it clear that learned Tribunal has assessed the probable annual income of deceased as ₹ 90,000/-, thereafter, 1/3rd income has been deducted towards personal expenses of the deceased (₹ 90,000 – ₹ 30,000), yet again reduced the same to ₹ 35,000/- without any basis.

Learned Tribunal has gone wrong while recording the findings to the effect that appellants have nowhere alleged or proved that as a result of death of Arun Kapoor (deceased), the business which he was doing has come to halt and no income is being derived from the same. It is neither the pleadings of the respondents; nor any evidence or even a suggestion has not been put to PW-1 that the business which deceased was running is still going on; or has come to the halt; or that the appellants are still getting the income from the said business. It seems that learned Tribunal, at its own, has recorded the above findings on surmises and conjectures and thus, the same deserve to be set aside. Consequently, it is held that established income of deceased at the time of death was ₹ 90,000/- per annum.

Still further, PW1- Claimant/appellant-Meena Kapoor while appearing as PW1 categorically stated that all the claimants i.e. total 05 were entirely dependent on the deceased and the same goes unrebutted. Therefore, in view of the judgment of Hon'ble Supreme Court in ***Sarla Verma (Smt.) and others*** *Versus* ***Delhi Transport Corporation and another, (2009) 6 SCC 121'***, where the deceased was married and number of dependent family members were 4 to 6, then deduction towards personal expenses of the deceased should be made 1/4th. Thus, learned Tribunal has wrongly made a deduction of 1/3rd from the annual income of the deceased and it should have been 1/4th. Therefore, after making deduction of 1/4th, the annual dependency is worked out as ₹ 67,500/- (₹ 90,000 – ₹ 22,500).

Again in view of the judgment of Hon'ble Supreme Court in '***National Insurance Company Limited*** *Versus* ***Pranay Sethi and others', (2017) 16 SCC 680,*** the claimants/appellants would also be entitled to the addition of 40% on the established income of the deceased towards future prospects and compensation under other conventional heads i.e. loss of estates, loss of consortium and funeral expenses.

Learned Tribunal has taken into consideration the age of the deceased as 41 years at the time of death, therefore, in view of judgment of **Sarla Verma's case (supra)**, the multiplier of 14 is attracted instead of '12'.

Thus, in the opinion of this Court, the following amount of compensation would be the "just compensation" in view of the facts and circumstances of the present case:-

Sr. No.	***Heads***	***Calculation***
(i)	*Annual Income of the deceased*	*₹ 90,000*
(ii)	*1/4th of (i) deducted for personal expenses*	*₹ 90,000 - ₹ 22,500 = ₹ 67,500*
(iii)	*40% addition for future prospects*	*₹ 67,500 + ₹ 27,000 = ₹ 94,500*
(iv)	*Net annual income of the deceased*	*₹ 94,500*
(v)	*Multiplier*	*14*
(vi)	*Total Loss of dependency*	*₹ 94,500 x 14 = ₹ 13,23,000*
(vii)	*Compensation for loss of estate*	*₹ 15,000*
(viii)	*Compensation for loss of consortium*	*₹ 40,000*
(ix)	*Compensation for Funeral Expenses*	*₹ 15,000*
	Total Compensation	***₹ 13,93,000***

In view of above, the present appeal, filed by the claimants, is allowed and the impugned award dated 07.09.2000, passed by learned Tribunal, is modified and amount of compensation is enhanced from ₹ 4,22,000/- to ₹ 13,93,000/-.

Needless to say that amount of compensation, already paid to the appellants, shall be adjusted and the remaining balance amount shall be paid to them within a period of six weeks from the date of receipt of certified copy of this order.

Disposed off in the above terms.

September 11, 2018 **(MAHABIR SINGH SINDHU)**
dkp/Gagan **JUDGE**

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*