1144

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.4760 of 2004 (O&M).
Decided on:-April 21, 2018.

Viran Wali and others

………Appellants.

Versus

Balwan Singh and others

………Respondents.

<u>CORAM</u>: ***HON'BLE MR. JUSTICE HARI PAL VERMA.***

*****

Present:- Mr. Karan Singh, Advocate
for the appellants.

None for respondent No.1-driver.

Mr. R.K. Singla, AAG, Haryana
for respondent No.2.

Mr. Vinod Chaudhri, Advocate
for respondent No.3-insurance company.

<u>HARI PAL VERMA, J. (Oral)</u>

The appellant-claimants have filed the present appeal seeking enhancement of compensation over and above the amount awarded by the Motor Accidents Claims Tribunal, Karnal (for short, the Tribunal) vide award dated 07.08.2004.

Briefly stated, in a claim petition filed by the appellant-claimants under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), the Tribunal has awarded compensation of Rs.2,22,200/- along with interest @ 9% per annum to the appellant-claimants from the date of filing of the claim petition till realisation, on account of the death of Madan Mohan Bakshi in a motor vehicular accident, which took place on 12.03.2003.

Deceased Madan Mohan Bakshi was about 47 years of age and was employed as Machine Man in Government of India Press, Nilokheri. Though as per the claim petition, he used to get Rs.8,000/- per month as salary, but the Tribunal found that the deceased was earning Rs.7620/- per month. The claim petition was filed by the mother and three sons of the deceased, who were aged about 70 years, 22 years, 18 years and 16 years respectively.

Learned counsel for the appellant-claimants has argued that the impugned award dated 07.08.2004 passed by the Tribunal needs modification to the extent that the Tribunal has not added income towards future prospects as held by Hon'ble Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and others 2017(4) RCR (Civil) 1009***. However, the multiplier of '13' has rightly been applied by the Tribunal. The Tribunal has assessed the loss of dependency as Rs.5,000/- per month out of which an amount of Rs.3,800/- per month has been deducted on account of family pension.

He has further argued that the family pension so deducted from the income of the deceased runs contrary to the law laid down by Hon'ble Apex Court in ***Lal Dei and others Versus Himachal Road Transport 2007(8) SCC 319***. Further, the Tribunal has awarded a sum of Rs.5,000/- to the appellant-claimants on account of last rites and kirya of the deceased, whereas in view of the law laid down in ***Pranay Sethi's case (supra)***, the claimants are entitled to Rs.15,000/- on this count.

On the other hand, learned counsel for respondent No.3-insurance company has argued that considering the fact that the appellant-claimants No.2 and 3, namely, Tarun Sharma and Varun Sharma were aged about 22 years and 18 years respectively at the time of filing the claim petition, they were not dependents upon the deceased and it is only the claimants No.1 and 4, namely, Viran Wali and Sumit Sharma, who are aged about 70 years and 16 years respectively, were dependents upon the deceased. The Tribunal has already awarded adequate compensation and there is no further scope of any enhancement. Since the claimants are getting family pension, the amount of Rs.3800/- per month has rightly been deducted by the Tribunal as the claimants are otherwise enjoying this amount.

I have heard learned counsel for the parties.

So far as the contention raised by learned counsel for respondent No.3-insurance company that the family pension is required to be deducted from the awardable compensation is concerned, the same cannot be accepted in view of the law laid down by Hon'ble Supreme Court in ***Lal Dei and others' case (supra)*** wherein it has been held that the component of family pension cannot be deducted from the income of the deceased.

There is no dispute that at the relevant time, the monthly income of the deceased was Rs.7,620/- per month and the deceased was about 47 years of age. Therefore, 30% income is required to be added towards future prospects in the light of ***Pranay Sethi's case (supra)***. However, the claimants No.2 and 3, namely, Tarun Sharma and Varun Sharma cannot be held entitled to get the amount of compensation as they were major at the relevant time and were not dependent upon the deceased. Thus, 1/3rd deduction towards personal expenses of the deceased has rightly been applied by the Tribunal.

After hearing learned counsel for the parties, this Court finds that the appellant-claimants No.1 and 4, namely, Viran Wali and Sumit Sharma are entitled to the compensation in the following manner:

Monthly income of deceased		Rs.7,620/-
Future Prospects	(30% of monthly income)	Rs.2,286/-
Total monthly income	(7620+2286)	Rs.9,906/-
Annual income	(9906 x 12)	Rs.1,18,872/-
Income tax.		Rs.13,040/-
Annual income after tax deduction	(118872 – 13040)	Rs.1,05,832/-
Deduction towards personal expenses of deceased.	1/3rd	Rs.35,277/-
Annual dependency	(105832 – 35277)	Rs.70,555/-
Multiplier	'13'	
Total loss of dependency	(70555 x 13)	Rs.9,17,215/-
Medical expenses and transportation		Rs.30,000/-
Conventional heads i.e. loss of estate and funeral expenses.	(15000+ 15000)	Rs.30,000/-
Total amount of compensation	(917215+30000+30000)	Rs.9,77,215/-
Amount already awarded		Rs.2,22,200/-
Enhancement		Rs.7,55,015/-

Accordingly, the impugned award dated 07.08.2004 passed by the Tribunal is modified to the aforesaid extent. Consequently, the appellant-claimants No.1 and 4 are awarded total amount of compensation of

Rs.9,77,215/- (Rupees nine lakhs, seventy seven thousand, two hundred and fifteen) instead of Rs.2,22,200/-, as awarded by the Tribunal. As per the law laid down in ***Pranay Sethi's case (supra),*** the aforesaid amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition till its realization instead of the interest @ 9% per annum, as awarded by the Tribunal.

With the aforesaid modification, the present appeal stands disposed of.

Since the main appeal has been disposed of, pending civil miscellaneous application, if any, also stands disposed of.

(HARI PAL VERMA)
JUDGE

April 21, 2018
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No