IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.1120 of 2003 (O & M)
Date of Decision:17.04.2018

Neelam Kumari and others ...Appellants

Versus

Mukesh Kumar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Gupta, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent No.2.

ANIL KSHETARPAL, J.(Oral)

Appellants-claimants are in the appeal seeking enhancement of the compensation assessed by the learned Motor Accident Claims Tribunal awarded on account of death of sole bread earner late Sh. Sharwan Kumar aged 42 years.

It is proved on the file that late Sh. Sharwan Kumar was employed as a Clerk in S.D. Trading Corporation and drawing a salary of Rs.4,500/- per month proved through Suresh Grover, Accountant of the firm. However, the learned Motor Accident Claims Tribunal without assigning any reason assessed the income at Rs.3,300/- per month. Learned Motor Accident Claims Tribunal further calculated the dependency by deducting the amount of 1/3rd towards his personal expenses. Under the conventional heads, only Rs.5,000/- was awarded.

Learned counsel for the appellants has vehemently argued that once the salary slip was proved by examining Suresh Grover, Accountant of the Firm, the Motor Accident Claims Tribunal erred in assessing the income at Rs.3,300/-. He also pointed out that for calculating dependency, 1/3rd deduction has been imposed, although, deceased had left behind four dependents namely widow and three minor daughters. Hence, he submits that dependency can not be less than 3/4th of the income. He has also pointed out that no amount has been awarded for future prospects. He has submitted that since deceased was employed in a private company, therefore, on account of future prospects and keeping in view the age of the deceased, the Court ought to have granted 25%. He has further submitted as per the judgment passed by the Constitution Bench of the Hon'ble Supreme Court in the case of ***"National Insurance Company Limited vs. Pranay Sethi and others"*** ***JT 2017 (10) SC 450*** under conventional heads, the amount should have been awarded Rs.70,000/-.

On the other hand, learned counsel for the Insurance Company has vehemently opposed the prayer and has submitted that since the accident took place on 12.11.1999, therefore, the Court has rightly calculated the amount.

This Court has considered the submission of respective counsels and with their able assistance gone through the paper-book. Learned Motor Accident Claims Tribunal has erred in taking the income of the deceased at Rs.33,00/- per month, whereas it is proved on the file that deceased was drawing a salary of Rs.45,00/-. No reason has been assigned by the Court to disbelieve the salary certificate, which is proved on file. Even while calculating the dependency, the Court has unreasonably imposed 1/3rd deduction on the salary while looking into the fact that the deceased was having four dependents namely widow and three minor daughters.

No doubt, father was also one of the claimant but father has not filed any appeal. Even under the conventional heads, meager amount of Rs.5,000/- as compensation has been awarded, whereas it should be Rs.70,000/-. On future prospects, the Constitution Bench of the Hon'ble Supreme Court has laid down that in case of deceased being between 40-50 years, 25% of the income is to be added towards future prospects.

The compensation payable to the appellants is reworked as:

Heads	Compensation awarded by MACT	Compensation awarded by HC
Income taken	3300/-	4500/-
+future prospects	NIL	+(25%) 1125/-
-Deduction	3300/- -1/3rd 1100/- 2200/-	5625/- -1/4th 1406/- 4219/-
Annual Dependency	2200X12=26,400/-	4219X12=50,628/-
Multiplier A=44 years M=14	26,400X14=3,69,600/-	50,628X14=7,08,792/-
+transportation	5000/-	NIL
	3,74,600/-	
+Consortium		40,000/-
+Loss of estate		15,000/-
+funeral expenses		15,000/-
		7,78,792/-
-Already awarded by MACT		-3,74,600/-
Enhanced compensation		4,04,192/-

The compensation is re-calculated accordingly. The enhanced compensation shall be payable with interest @ 7.5% per annum from the date of claim petition till realization.

In view thereof, the appeal is allowed.

17.04.2018 **(ANIL KSHETARPAL)**
sheetal **JUDGE**

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No