IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2158 of 2005
Date of Decision:13.12.2018

Gurmit Kaur ... Appellant

Vs.

Dr. Ramesh Garg and another ... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Amarpreet Singh, Advocate Amicus Curiae for the appellant.
Mr. Binderjit Singh, Advocate for respondent No.1.
Mr. Rajnish Malhotra, Advocate for respondent No.2.

AVNEESH JHINGAN J. (Oral)

None had appeared for the appellant on the last two occasions. Today also, the position is same. Mr. Amarpreet Singh, Advocate (P-1943-2016) who is present in Court, is appointed as Amicus Curiae to assist the Court. Copy of the paper book has been supplied to him and after going through the same, he assisted the Court.

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The award dated 23.02.2005 passed by the Motor Accident Claims Tribunal, Bathinda (for short “Tribunal”) has been assailed by the widow of Kishan Singh seeking enhancement of compensation awarded under Section 163-A of Motor Vehicles Act, 1988 (for short “the Act”).

The owner of car bearing registration number PB-32-9000 (hereinafter referred to as “the car”) and the insurer (i.e. The New India Assurance Company Limited) of the car have been arrayed as respondents No.1 and 2 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal

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are that on 12.01.2004, Kishan Singh along with Subina was coming from Goniana to Bathinda in the car. When they reached near Bhai Ghanayia Chowk, the car met with an accident with one Tractor bearing registration number HR-22-4784 which was being driven rashly and negligently. As a result of the accident, Kishan Singh sustained grievous injuries and died at the spot.

A claim petition under Section 163-A of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that the insurer of the car was liable to pay compensation to the claimant. The Tribunal awarded a sum of ₹ 1,67,000/- along with interest @ 6% per annum. The amount included ₹ 5,000/- for loss of consortium and ₹ 2,000/- for funeral expenses.

There is a dispute with regard to the monthly earning of the deceased as the claimant had pleaded before the Tribunal that the deceased was earning a sum of ₹ 3000/- to ₹ 3200/- per month and was 50 years old, however, the Tribunal assessed the income of the deceased as ₹ 2,000/- per month. The Tribunal further opined that the deceased was somewhere 50 to 55 years old and applied multiplier of 10 and 1/3rd deduction was made for self-expenses as per the IInd Schedule to the Act.

Learned counsel for the appellant contends that the Tribunal erred in assessing the monthly earning of the deceased as ₹ 2000/- which is on the lower side. His grievance is that as the age of the deceased was around 50 years, therefore, multiplier of 11 should be applied as per IInd schedule to the Act and no amount has been awarded for loss of estate.

Learned counsel for the respondents while defending the award argued that the claimant failed to prove that the deceased was earning

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more than ₹ 2000/- per month.

The contention raised by the learned counsel for the appellant deserves acceptance. There is no serious dispute raised that the deceased was a driver and was employed with respondent No.1 i.e. owner of the car, in such circumstances, it would be appropriate that the monthly income of the deceased is to be considered as ₹ 3300/-. In consonance with the IInd schedule to the Act, multiplier of 11 is applied and 1/3rd deduction is made for self expenses. Further claimant is entitled to ₹ 2500/- for loss of estate.

In view of the above discussion, the compensation is recalculated as under:

Particulars	**Amount (in ₹)**
Annual Income of the deceased Assessed	₹ 39,600/-
1/3rd deduction for self expenses	₹ 13,200/-
Annual dependency	₹ 26,400/-
Applying multiplier of '11' (26,400X11)	₹ 2,90,400/-
Conventional head	₹ 9500/-
Grand Total	₹ 2,99,900/-

Accordingly, award dated 23.02.2005 passed by the Tribunal is modified to the extent that amount of ₹ 1,67,000/- awarded by the Tribunal is enhanced to ₹ 2,99,900/- along with interest @ 7.5 % per annum from the date of filing of the claim petition till realization of the amount.

Consequently, the appeal is partly allowed in the above said terms.

13.12.2018 **(AVNEESH JHINGAN)**
rajeev **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**

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