**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**C.M No.16562-CII-2018 in/and
FAO-955-2007 (O&M)
Date of Decision : 19.12.2018**

Sita Rani (deceased) Through LRs. and others ...... Appellants

Versus

Nirbhai Singh and another .... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
***

Present: Mr. Sandeep Khunger, Advocate
for the appellants.

None for respondent No.1.

Mr. R.C. Kapoor, Advocate
for respondent No.2-insurance company.
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AJAY TEWARI, J. (ORAL)

C.M No.16562-CII-2018

This is an application for early hearing of the main appeal. With the consent of both the counsel, the appeal is taken up for hearing today itself. Application stands allowed.

FAO-955-2007 (O&M)

The appeal has been filed for enhancement of compensation and for modifying the award dated 17.11.2006 awarding compensation of Rs.2,95,000/- alongwith interest @ 6% to the appellants on account of death of Pardeep Kumar aged 43 years in the year 2004.

Since the only dispute is regarding quantum further detailed reference to the facts would not be required.

Counsel for the appellants has argued that the Tribunal erred in taking the income of the deceased @ Rs.3000/- per month by ignoring the income tax return and Forms -16A which were placed on record. Counsel states that the claimants had filed Form -16A for the years 2001-2002, 2002-2003, 2003-2004 and 2004-2005 and the income tax return for the year 2004-2005. As per him, the income tax return for the year 2004-2005 was wrongly discarded by the Tribunal by noticing that the same was filed after the death of the deceased. He has argued that the death had taken place on 16.04.2004 and on that date the deceased had 3½ more months to file returns and consequently the non-filing of returns up to 16.04.2004 cannot be taken to be fatal to the case of the appellants. Moreover, he has further argued that the deceased was Government transporter whose main job was to transport food grains for the FCI and the entire payments which the claimants were relying were the payments made from the FCI and therefore there was no reason to doubt the same. He has further pointed out that even in the income tax returns Ex.P7, against a total turnover of Rs.1,19,00,000/- odd the income of Rs.4,20,000/- was claimed.

It was not a case where suddenly the income of lakhs and lakhs were claimed. On the previous date, I requested the counsel for the insurance company to have the income tax returns examined from a Chartered Accountant. Today counsel for the respondent No.2 – insurance company has accepted that though the Chartered Accountant has stated that he needed the previous income tax returns of the two previous years also to come to know the earning capacity of the deceased yet he was prima-facie satisfied that for the year 2004-05 the deceased had gross receipts of Rs.1,19,32,438/- and after meeting all regular business expenses resulted into the net income of Rs.4,02,000/- on which income tax of Rs.94,600/- was applicable. As per the counsel, this left an annual income of Rs.3,07,400/- which would come to monthly income of approximately Rs.25,600/- p.m. In view of this material, I take the income of the deceased as Rs.25,600/- p.m. Since he was 43 years old, in view of the judgment of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009,*** the appellants would be entitled to 25% future prospects. Since the deceased had left behind a widow, an unmarried daughter and a minor son, the deduction would be 1/4th.

Counsel for the appellants has further argued that that as per the judgment of the Supreme Court in ***Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298,*** the multiplier of 14 has to be applied instead of 12. Counsel for the respondent No.2 is not in a position to deny this fact. Consequently, I hold that multiplier of 14 has to be applied.

Counsel for the appellants has further argued that only an amount of Rs.7000/- has been paid under the conventional heads. However, as per Pranay Sethi's case (supra) and as per another judgment of the Supreme Court in ***Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018, decided on 18.09.2018*** wherein the concept of consortium has been expanded after considering Pranay Sethi's case (supra), an amount of Rs.1,90,000/- (i.e. Rs.40,000/- for consortium/filial consortium each to all the claimants and a sum of Rs.30,000/- for funeral expenses and loss of estate) has to be awarded under the conventional heads. Counsel for the respondent No.2 is not in a position to deny this fact. Consequently, I award Rs.1,90,000/- under the conventional heads. However, an amount of Rs.7000/- which was awarded earlier shall be deducted.

Counsel for the appellants has further argued that the Tribunal erred in granting only 6% interest and in view of the judgment of the Supreme Court in Magma General Insurance Company Ltd.'s case (supra), the interest of 12% should have been awarded. Counsel for the respondent No.2 is not in a position to deny this fact also. Consequently, I award interest @ 12% p.a. on the enhanced amount from the date of filing of the claim petition till the date of realization. Apart from the individual amounts awarded, the remaining compensation will be divided in the following manner:-

i) 50% to the appellant No.2 and 25% to the appellants No.3 and 4.
ii) In case the appellant No.4 is still a minor, his share will be put in a fixed deposit.
iii) Since it is stated that the appellant No.1 has died, therefore, her share of filial consortium will be divided equally between other three appellants.

Rest of the award shall remain same. Appeal stands allowed.

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

(AJAY TEWARI)
JUDGE

December 19, 2018
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Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No