IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.979 of 2006 (O&M)
Date of decision:30.11.2018.

Smt. Jeet Kaur and another

...Appellants

Versus

Lakhwinder Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Jasneet Mehra, Advocate for the appellants.

Mr. Vinod Gupta, Advocate for respondent No.3/Insurance Company.

LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Motor Accident Claims Tribunal, Kurukshetra (`Tribunal' for short) vide award dated 19.10.2005 on account of death of Som Nath alias Om Parkash in a motor vehicle accident on 27.11.2002.

The claimants, who are mother, brother and sister of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Som Nath alias Om Parkash due to injuries received in a motor vehicle accident which took place on 27.11.2002. FIR No.338 dated 27.11.2002 was registered under Sections 279, 304-A and 427 IPC against respondent No.1. It was pleaded that the deceased at the time of his death was unmarried and 20 years old. He was stated to be a cobbler, running a business of making and selling of shoes, earning Rs.6,000/- per month. Compensation was thus prayed for.

The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality.

Learned Tribunal further concluded the deceased to be 20 years old at the time of his death and assessed his income as Rs.2700/- per month. Deduction of 1/3rd was effected towards personal expenses keeping in view the number of dependents. Multiplier of 8 was applied keeping in view the age of the claimants. Thus, total dependency was assessed at Rs.1,72,800/- (18,00x12x8). A sum of Rs.8,000/- was awarded towards transportation including last rites and conventional amount. Thus, the claimants No.1 and 3 were held entitled to total compensation of Rs.1,80,800/- along with interest @ 7.5% per annum from the date of filing of claim petition till realisation. Claimant No.2, brother of the deceased, was not held entitled to any compensation as he was major at the time of death of the deceased and not dependent upon him. This appeal has been filed by claimants No.1 and 3 only for enhancement of the compensation awarded.

Learned counsel for the appellant submits that the learned Tribunal has wrongly assessed income of the deceased to be Rs.2700/- per month, as he was working as a cobbler, running his own shop and earning Rs.6000/- per month. Moreover, no increase in income on account of future prospects has been afforded. Multiplier has wrongly been applied keeping in view the age of the claimants. Amount awarded under the conventional heads needs to be enhanced as per the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018. It is thus prayed that this appeal be allowed and compensation awarded be enhanced.

Learned counsel for respondent No.3/Insurance Company submits that deduction of 50% instead of 1/3rd should be effected as the deceased was unmarried at the time of his death. He also refutes the above said arguments while submitting that the impugned award has been passed correctly and no ground for any enhancement is made out.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is not in dispute that deceased died due to injuries received in a motor vehicle accident which took place on 27.11.2002 due to the rash and negligent driving of the offending vehicle by respondent No.1. Liability of the Insurance Company is also undisputed. There is no evidence on record to show the deceased to be earning an income higher than the income assessed by the learned Tribunal as Rs.2700/- per month. The deceased was claimed to be working as a Cobbler and running his own shop, though there is no documentary evidence to prove the same. It is to be noticed that minimum wage of a skilled labourer in the State of Haryana at the time of accident was about Rs.2600/- per month. Therefore, no ground for enhancing income of the deceased is made out. In view of the judgment of Hon'ble the Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, 50% increase in income has to be afforded on account of future prospects as the deceased was 20 years old. There is no dispute that the deceased was 20 years old at the time of his death. Accordingly, multiplier of 18 instead of 8 has to be applied. Learned counsel for the Insurance Company has submitted that deduction of 50% instead of 1/3rd should be effected as the deceased was unmarried at the time of his death. The claimants in this case are the unmarried sister and widow mother of the deceased. The brother of the deceased was not held entitled to any compensation by the learned Tribunal. He has not filed any appeal against the said decision. Without doubt the deceased would necessarily be contributing towards his mother and sister. Therefore, deduction of 1/3rd towards personal expenses has been rightly effected. In view of the judgment of Hon'ble the Supreme Court in the case of Magma General Insurance Company Ltd. (supra), Rs.40,000/- each is afforded to the appellants towards loss of consortium filial etc. The appellants are also entitled to Rs.15,000/- each for loss of estate and funeral expenses instead of Rs.8,000/- awarded towards transportation including last rites and conventional amount.

Appellants are, thus, entitled to compensation, which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Rupees***
1.	Income	2700 p.m. i.e., 32,400/- per annum
2.	Total income after addition at the rate of 50% on account of future prospects	32,400+16200 (32,400x50%) = 48,600/-
3.	Income after deduction of 1/3rd on account of personal expenses	48,600–16,200 (48,600/3) = 32,400/-
4.	Total dependency after applying a multiplier of 18	(32,400 **x**18) =5,83,200/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of consortium to appellants @ 40,000/-, Rs.80,000/- (40,000x2)	80,000/-
	Grand Total	6,93,200/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Apportionment and disbursement of the compensation shall be as per directions of the learned Tribunal in award dated 19.10.2005. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 19.10.2005, present appeal is disposed of.

(LISA GILL)
JUDGE

30.11.2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No