IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.154 of 2009 (O&M)
Date of decision: 20.09.2018

Geta Malik and another ... Appellants

Versus

Neelmani Sharma and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajan Bansal, Advocate
for the appellants.

Mr. Shiv Kumar, Advocate
for respondent No.2.

Ms. Neha Sharma, Advocate for
Mr. S.P. Arora, Advocate
for respondent No.3.

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<u>REKHA MITTAL, J. (Oral)</u>

The claimants are in appeal seeking enhancement of compensation on account of death of N.C. Malik in a motor vehicular accident that took place on 24.12.2005.

The Tribunal has awarded compensation of Rs.15,16,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.70,000/-
2. Deduction for personal expenses	1/3rd
3. Deduction of family pension	Rs.6000/-
4. Monthly loss of dependency	Rs.41,000/-
5. Multiplier	3

6. Loss of dependency	Rs.14,76,000/-
7. Loss of love and affection, mental agony, pain and sufferings etc.	Rs.20,000/-
8. Funeral expenses	Rs.20,000/-

Counsel for the appellants would urge that the deceased was an employee of Glaxo Smithkline Consumer Health Care, Baddi. A representative of the company aforesaid namely Vijay Singh PW3 was examined to prove avocation and salary of the deceased. He produced on record salary slips Ex.PW3/B1 to B3. As per the salary slips, gross salary of the deceased was Rs.1,08,110/- per month. The deceased also filed income tax return and in the latest income tax return Ex.PW1/F, his gross income is Rs.16,68,875/- and liability to pay income tax to the tune of Rs.4,82,425/-. It is argued that income of the deceased may be assessed on the basis of latest income tax return Ex.PW1/F filed by the deceased in July, 2005 though he died in December, 2005.

Another submission made by counsel is that claimants are entitled to addition in income for future prospects @ 15% as the deceased was less than 55 years of age and a regular employee of the aforesaid company since 1990. A multiplier of 11 is required to be applied as the deceased was in the age bracket of 51 to 55 years. No deduction can be made towards family pension payable after unfortunate demise of Sh. N.C. Malik. Adequate compensation may be allowed under conventional heads.

Counsel representing the respondents have submitted that compensation assessed by the Tribunal is just and reasonable and the same does not warrant intervention by this Court.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, the deceased was working with Glaxo Smithkline Health Care at Baddi. He joined the aforesaid company as Manufacturing Manager in May, 1990. His gross emoluments at the time of death were Rs.1,08,110/-. The deceased filed the latest income tax return in July, 2005 wherein his gross income is Rs.16,68,875/- per annum. After deducting liability to pay income tax to the tune of Rs.4,82,425/-, income available for loss of dependency comes to Rs.11,86,450/- per annum. Claimants shall be entitle to addition in income for future prospects @ 15% as the deceased was a regular employee of the aforesaid company. Deduction for personal expenses allowed by the Tribunal is correct and affirmed. The Tribunal has allowed deduction of Rs.6000/- towards family pension but the same is against the settled position in law.

The deceased was 54 years 11 months old on the day of occurrence as he was born on 23.01.1951 and died on 24.12.2005. The Tribunal has applied multiplier of 3 for computing loss of dependency without appreciating the ratio of judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**. A split multiplier also cannot be applied even if the deceased was to retire after a period of three years. In this context, reference can be made to judgment of this Court **Jasmel Kaur and another Vs. Sukhraj**

Singh and others, FAO No.4858 of 2012, decided on 07.02.2018. After applying multiplier of 11, loss of dependency is calculated at Rs.1,00,05,728/- [(Rs.11,86,450 x 11) + (15% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.1,00,75,728/- and the additional amount is Rs.85,59,728/- (1,00,75,728 - 15,16,000), payable with interest @ 7.5% per annum from the date of petition till realization, to widow of the deceased. All other terms and conditions of the award shall remain intact.

The appeal is partly allowed in the aforesaid terms.

20.09.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No