IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CM-6049-CII-2016 in/and
FAO-4208-2009
Date of Decision : 17.07.2018

Rajni Devi and others ...... Appellants

Versus

Mela Singh and others ...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present :- Mr. R.D. Sharma, Advocate
for the applicants-appellants.

None for respondent No.1.

Mr. Nitin, Advocate
for Mr. B.S. Bhalla, Advocate
for respondent No.2.

Mr. Vinod Gupta, Advocate
for respondent No.3.

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AJAY TEWARI, J. (Oral)

CM-6049-CII-2016

For the reasons recorded, the application is allowed. Amended memo of parties as well as death certificate of of appellant No.4 is taken on record.

FAO-4208-2009

This is an appeal for enhancement of compensation and for modifying the award dated 07.01.2009 granting compensation of Rs.2,72,000/- in equal share alongwith interest @ 6 % per annum in favour of the appellants and against the respondents No.1 and 2. Since very limited issue is involved in this petition the detailed reference to the facts is not required.

Counsel for the appellants has argued that the deceased was stated to be a carpenter and even if no certificate was placed on record the income of Rs.2000/- which had been taken by the Tribunal in the year 2005 is grossly inadequate.

I find this to be indeed so. Even the minimum wages in the year 2005 were Rs.2500/- odd and consequently the income should be taken as Rs.2500/-. Ordered accordingly.

Counsel for the appellants has further argued that in view of the Constitution Bench judgment of the Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009,*** future prospects of 40% has to be given and since there were four claimants at the time of filing of the claim petition, the deduction of $1/4^{th}$ has to be applied. Further the counsel has argued that as per the judgment of Pranay Sethi (supra), an amount of Rs.70,000/- has to be awarded under conventional heads. It is also asserted that the rate of interest i.e. 6% is also too little.

I accept these arguments. Consequently, I grant 40% towards future prospects. Further it is held that deduction of $1/4^{th}$ has to be applied. Further I award an amount of Rs.70,000/- under the conventional heads i.e. Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards for funeral expenses. The rate of interest would be 7.5% p.a. from the date of claim petition till payment. However, out of the enhanced amount, 50% would fall to the share of the appellant No.1 and 50% would fall to the share of rest of the appellants which would be shared by them equally. The management would be as per the award of the Tribunal.

Counsel for the appellants has further argued that insurance company was wrongly exonerated by the Tribunal and even if where the licence is found to be fake the insurance company can not be exonerated from paying the compensation. However, recovery rights can be given to it. To support his contention, the counsel has relied upon the judgment of the Supreme Court in the matter of ***Munna Lal Jain vs. Vipin Kumar Sharma and others, 2015 (3) SCC (Civil) 315***.

Counsel for the insurance company-respondent No.3 is not in a position to deny these facts.

Consequently, it is held that the respondents are jointly and severally liable to pay compensation to the appellants and the insurance company – respondent No.3 would be entitled to recover the same from the owner.

Appeal is allowed in the above terms and the award is modified accordingly.

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

July 17, 2018 **(AJAY TEWARI)**
ashish **JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No