IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2544 of 2011

Date of Decision: November 27 , 2018.

Suman Devi and others ...... APPELLANT (s)

Versus

Devi Raj and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Anil Malik, Advocate
for the appellants.

Mr. R.C.Gupta, Advocate
for respondent No.3– Insurance Company.

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LISA GILL, J.

CM No.19753-CII of 2018

Notice of the application.

Mr. R.C.Gupta, Advocate, accepts notice on behalf of respondent No.3 and submits that he has no objection in case the main appeal, which is listed at Sr. No.708 on the regular board of this Bench, is taken up for hearing.

With the consent of the parties, the main appeal is taken up for final hearing today itself.

Application is disposed of.

FAO No.2544 of 2011

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Kaithal (for short, the 'Tribunal') vide impugned award dated 06.08.2010 on account of death of Ashwani Kumar in a motor vehicle accident.

Brief facts necessary for adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of the death of Ashwani Kumar, who lost his life in a motor vehicle accident which took place on 01.05.2009. FIR No.96 dated 01.05.2009, Police Station Chandi Mandir was lodged against respondent No.1. The deceased was claimed to be running a large scale business, besides a factory, earning ₹50,000/- per month. Compensation was thus prayed for.

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 Tipper bearing registration No. PB-08ZT-5007 by respondent No.1 – Desh Raj. The said finding of the learned Tribunal has attained finality.

Learned Tribunal awarded a sum of ₹12,64,800/- as compensation to the claimants vide impugned award dated 06.08.2010. The deceased was aged 34 years at the time of the accident. Income of the deceased was assessed as ₹1,03,751/- per annum. Deduction to the extent of 1/4th on account of personal expenses was effected and multiplier of 16 was applied. A sum of ₹20,000/- towards loss of consortium was awarded. It was observed by the learned Tribunal that the findings on Issue No.4 shall not come in the way of the Insurance company for proceeding against the owner, in case the insurance company wishes to proceed against the owner for recovery rights for violation or breach of the conditions of the insurance policy.

Sole ground raised by learned counsel for the appellants is that increment on account of future prospects has not been awarded and meagre compensation has been awarded under the conventional heads. It is thus prayed that the compensation be enhanced accordingly.

Learned counsel for respondent No.3 – Insurance Company however refutes the arguments raised. It is submitted that the impugned award dated 06.08.2010 be upheld as there is no ground for any enhancement of the compensation.

I have heard learned counsel for the parties and have gone through the file.

There is no dispute regarding the accident being caused by the rash and negligent act of respondent No.1 in which Ashwani Kumar lost his life on 01.05.2009. There is further no dispute regarding income of the deceased as assessed by the learned Tribunal as ₹1,03,751/- per annum on the basis of Income Tax Return (Ex.P3) for the assessment year 2008-2009. However, increment on account of future prospects has to be afforded at the rate of 40% as the deceased as he was admittedly 34 years old at the time of the accident keeping in view the observations of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, *2017(16) SCC 680***. Deduction to the extent of 1/4th on account of personal expenses has been rightly effected and the multiplier of 16 has also been corrected applied. ₹15,000/- each towards funeral expenses and loss of estate are awarded to the appellants. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on 18.09.2018**, all the appellants are entitled to ₹40,000/- each on account of loss of consortium.

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

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	1,03,751 p.a.
2.	Total income after addition at the rate of 40% on account of future prospects	1,03,751 + (1,03,751 **x** 40%) = 1,45,251
3.	Income after 1/4th deduction on account of personal expenses	1,45,251 – (1,45,251 **x** 1/4) = 1,08,938
4.	Total dependancy after applying a multiplier of 16	(1,08,938 **x** 16) = 17,43,008
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of consortium @ ₹40,000 each	(40,000 **x** 5) = 2,00,000
	Grand Total	₹19,73,008/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the appellants as well as manner of disbursement as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

November 27 , 2018.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No