IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.297 of 2011
Date of decision: 15.05.2018

Parmlesh @ Parmesh and others ...Appellants

Versus

Mustak Ahmed and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE RITU BAHRI

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

Mr.Vinod Gupta, Advocate,
for the respondent/Insurance Company.

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RITU BAHRI, J. (Oral)

The claimants are in appeal seeking enhancement of compensation in regard to death of Krishan Kumar in a motor vehicular accident that took place on 28.10.2007. The Tribunal has assessed compensation qua loss of dependency and under conventional heads to the tune of Rs.5,73,176/-, detailed hereunder:-

1. Monthly income of the deceased Rs.14581/-

2. Deduction of income tax=Rs.14581/- -- Rs.215/-= Rs.14366/-

3.Addition for future prospects 50%= Rs. 14366/- + Rs.7183/-= Rs.21,549/-

4. Deduction for personal expenses 1/3rd= Rs.21,549/- --- Rs.7183/- = Rs.14366/-

5. Annual loss of dependency after applying the multiplier-

Rs.14366/- X 12 X 3= Rs.05,17,176/-

6.Loss of estate- Rs.5,000/-

7.Funeral expenses= Rs.5,000/-

8.Consortium=Rs.10,000/-

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Total Rs.5,73,176/-

As the deceased was a regular employee of Haryana Police and family of the deceased is entitled to financial assistance under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006'), issued by General Administration Department, ex-gratia financial assistance on compassionate grounds to member of the family of a deceased government employee who dies while in service is to be granted. In the present case, it has come in the cross-examination of PW-4 Ajaib Singh ASI that the widow of the deceased would be getting salary of Rs.14581/- for the next 12 years.

Counsel for the appellants has submitted that the Tribunal has wrongly calculated the compensation granted to the claimants and adequate compensation may be allowed under conventional heads in the light of latest judgment of Hon'ble the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Ors. Special Leave Petition (Civil) No. 25590 of 2014, decided on 31.10.2017. He has also referred to the judgment of the Co-ordinate Bench of this Court in the case of Reliance General Insurance Company Ltd. Vs. Sashi Sharma, 2016 (4) RCR (Civil) wherein, it has been observed that the Court Apex Court has not adverted to the issue that had the Rules of 2006 extending assistance to family of the deceased employee been not in existence, family would have been entitled to pension to the extent of 50% of the last drawn pay. As per the settled position in law, pensionary benefits available to family of the deceased employee are not amenable to deduction for computing loss of dependency. Under the circumstances, in case deduction to the extent of 50% is allowed, the Rules of 2006 would operate prejudicially against the claimants causing loss of pensionary

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benefits to which family of deceased was entitled from the date of death till the age of superannuation which can neither be spirit of the Rules nor of the judgment of Hon'ble the Supreme Court as the provisions of the Motor Vehicles Act providing for compensation to the victim family is a benevolent legislation framed with an avowed social object to achieve. In view of the above, it is expedient in the interest of justice that only 50% amount to be paid to family of the victim would be deducted out of compensation assessed.

I have heard counsel for the parties, perused the paper book particularly award dated 11.01.2010 passed by the Motor Accidents Claims Tribunal, Karnal (in short 'the Tribunal'). It is not in dispute that the offending vehicle was fully insured with the Insurance company. Keeping in view the facts and circumstances of the case, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Income	Rs.14,581/-
2	Deduction of income tax	Rs.14,581/- -- Rs.215/-= Rs.14366/-
3.	Future prospect 50%	Rs.14366/- + Rs.7183/-= Rs.21,549/-
4.	Deduction 1/3 rd	Rs.21,549/- --- Rs.7183/-= Rs.14366/-
5.	Annual loss of dependency after applying the correct multiplier	Rs.14366/- X 12 X 15= Rs.25,85,880/-
6.	Conventional heads	Rs.70,000/-
7.	Total compensation	Rs.26,55,880/-
8.	Compensation entitled due to ex-gratia amount and judgment referred above 50% of the total compensation.	Rs.26,55,880/- ---- Rs.13,27,940/- = Rs.13,27,940/-
	Enhanced amount of	Rs.13,27,940/- --- Rs.5,73,176/-

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	compensation	=Rs.7,54,764/-

Resultantly, the enhanced amount of compensation of Rs.7,54,764/-shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5%% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Shri Nagar Mal and Ors. Vs. The Oriental Insurance Company Limited and Others passed in Civil Appeal No.448 of 2018**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

15.05.2018
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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