IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1317 of 2012 (O&M)
Date of decision:09.10.2018.

Kuldeep Kaur alias Virpal Kaur and others

...Appellants

Versus

Bhushan Kumar and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Deepak Gupta, Advocate for the appellants.

Mr. Lalit Garg, Advocate for respondent No.2/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, Bathinda (`Tribunal' for short) vide award dated 22.07.2011 on account of death of Sarabjit Singh in a motor vehicle accident on 27.03.2009.

The claimants, who are the wife and children of the deceased, filed a petition under Section 166 of the Motor Vehicles Act, seeking compensation on account of death of Sarabjit Singh due to injuries received in a motor vehicle accident which took place on 27.03.2009. FIR No.215 dated 28.03.2009 was registered under Sections 279, 304-A, 337 and 338 IPC against respondent No.1. It was pleaded that the deceased at the time of his death was working as a work charge employee in Punjab State Electricity Board, Cantt. Sub Division, Bathinda. His monthly income was stated to be Rs.9809/-. 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 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 assessed the age of the deceased as 43 years at the time of his death and assessed his income as Rs.8840/- per month. Deduction of 1/3rd was effected towards the personal expenses keeping in view the number of dependents. After applying a multiplier of 15, total dependency was assessed at Rs.10,62,000/-. A sum of Rs. 5000/- each was awarded towards loss of consortium and funeral expenses. Another sum of Rs.33,260/- was awarded for medical expenses. Thus, claimants were held entitled for a total compensation of Rs.11,05,260/- along with interest @ 7% per annum from the date of filing of claim petition till realisation.

Learned counsel for the appellants submits that learned Tribunal has erred in assessing the income of the deceased to be Rs.8831/-. At best, deduction of Rs.200/- which was given to the deceased on account of cycle allowance could have been deducted. Increase in income on account of future prospects should, however, be afforded @ 30% in view of the judgment of Hon'ble Supreme Court in <u>National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009</u>. Deduction of 1/4th instead of 1/3rd should be effected towards the personal expenses keeping in view the number of dependents. It is however not denied that multiplier of 14 instead of 15 should be applied while the amount awarded under the conventional heads needs to be enhanced as per the judgment of the Hon'ble Supreme Court in <u>Magma General Insurance Company Ltd. Vs.</u>

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 the Insurance Company refutes the said arguments. It is further submitted that the appellants are not entitled to the benefits under the conventional heads as per the judgment of the Hon'ble Supreme Court in the case of Magma General Insurance Company (supra), though it is submitted that the compensation under the conventional heads may be afforded to the claimants as per the judgment of the Hon'ble Supreme Court in the case of Pranay Sethi (supra). Learned counsel relies upon the judgment of the Hon'ble Supreme Court in Central Board of Dawoodi Bohra Community and another Vs. State of Maharashtra and another, 2005 (2) SCC 673 to submit that the judgment of the Hon'ble Supreme Court in the case of Magma General Insurance Company (supra) is, in fact, per incuriam. Learned counsel further submits that the judgment of Hon'ble Supreme Court in the case of Magma General Insurance Company (supra) cannot be relied upon by this Court in view of the judgment of Hon'ble Supreme Court in the case of Pranay Sethi (supra).

The argument raised by learned counsel for the appellants is not tenable. The judgment of the Hon'ble Supreme Court in the case of Pranay Sethi (supra) has been duly considered and referred to in the judgment of the Hon'ble Supreme Court in the case of Magma General Insurance Company (supra). Therefore, this Court is bound to follow the said verdicts.

Age of the deceased was admittedly 43 years at the time of accident. He was earning a sum of Rs.9809/- per month at the time of his death. Learned Tribunal has indeed erred in assessing his income as

Rs.8831/-. Deduction of only Rs.200/- from the salary of the deceased is justified. His income is thus assessed as Rs.9609/- per month. Another argument raised on behalf of the Insurance Company is that increase of only 25% should be afforded keeping in view the fact that deceased was a work charge employee with the Punjab State Electricity Board. However, it cannot be disputed that the deceased had worked with the said office for a considerable time and there is nothing on record to indicate that he would not have continued service with the said Electricity Board. Therefore, it is considered just and expedient to grant increment of 30% on account of future prospects in view of the guidelines laid down by the Hon'ble Supreme Court in the case of Pranay Sethi (supra). Deduction of 1/4th instead of 1/3rd has to be effected keeping in view the number of dependents. Multiplier of 14 instead of 15 has to be applied. In view judgment of the Hon'ble Supreme Court in the case of Magma General Insurance Company (supra), appellant/claimant No.1 is entitled to Rs.40,000/- instead of Rs.5000/- for spousal consortium and appellants/claimants No.2 to 4 are entitled to Rs.40,000/- each for parental consortium. The claimants are entitled to Rs.15,000/- each for loss of estate and funeral expenses instead of Rs. 5,000/- afforded towards funeral expenses.

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

Sr.No.	***Heads of Claim***	
1.	Income	9609 p.m. i.e., 1,15,308/- per annum
2.	Total income after addition at the rate of 30% on account of future prospects	1,15,308+34592 (1,15,308x30%) = 1,49,900/-

3.	Income after deduction of 1/4th on account of personal expenses	1,49,900–37475 (1,49,900/4) = 1,12,425/-
4.	Total dependency after applying a multiplier of 14	(1,12,425 **x**14) =15,73,950/-
5.	Loss of estate	15,000/-
6.	Loss of funeral	15,000/-
7.	Loss of consortium to all four claimants @ Rs.40,000/-x4= Rs.1,60,000/-	1,60,000/-
	Grand Total	17,63,950/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. 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.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the award dated 22.07.2011, present appeal is disposed of.

(LISA GILL)
JUDGE

October 09, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No