

224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2618 of 2012(O &M)

Date of decision : 31.07.2018

Harbans Kaur

..... Appellant

versus

Avtar Singh and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.H.R.Bhardwaj, Advocate for the appellant.

Mr.Maninder Arora, Advocate for respondent No.3.

REKHA MITTAL , J. (ORAL)

CM-22259-CII-2015

Prayer in this application is for recalling order dated 12.10.2015 whereby FAO No. 2618 of 2012 seeking enhancement of compensation on account of death of Spinder Singh son of the applicant-appellant has been dismissed for want of prosecution.

Heard.

In view of averments made in the application supported by an affidavit of Sh.H.R.Bhardwaj, Advocate coupled with legislative intent behind the provisions of Motor Vehicles Act, 1988 providing compensation to make good the loss victim or his family has suffered, application is allowed, order dated 12.10.2015 is recalled and the appeal is restored to its original number and stage.

Disposed of accordingly.

FAO-2618-2012

The claimant is in appeal seeking enhancement of compensation on account of death of Spinder Singh in a motor vehicular accident that took place on 06.05.2010.

The Tribunal has awarded compensation of ₹ 2,50,000/- by relying upon judgement of Hon'ble the Supreme Court **Santosh Rani v. Ranjit Singh and others, 2008 Apex Court Judgments 1405** wherein compensation to the tune of ₹ 2,50,000/- was awarded in respect of death of a boy aged 13 years. The Tribunal has also relied upon another judgment of Hon'ble the Supreme Court **Lata Wadhawa v. State of Bihar 2000(1) ACJ 1735** wherein Hon'ble the Supreme Court had dealt with grant of compensation with regard to various deaths including death of young children of tender age.

Counsel for the appellant would urge that as per plea of the claimant, the deceased was 16 years old but his age in the post mortem report is recorded to be 18 years. It is argued that the claimant is entitled to compensation by determining income of the deceased, extending benefit of future prospects and applying appropriate multiplier and deduction for personal expenses in the light of judgments of Hon'ble the Supreme Court **Smt.Sarla Verma v. Delhi Transport Corporation and another, 2009 ACJ 1298(SC) , Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315 and National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

Counsel representing the insurance company has supported

assessment of compensation by the Tribunal. He would also raise an issue that as the deceased was 16 years old, he must not have been possessing a driving licence, therefore, negligence to some extent is liable to be attributed to the deceased.

I have heard learned counsel for the parties, perused the paper book particularly the award.

The two judgments of Hon'ble the Supreme Court referred to in the award relate to death of children less than 15 years of age. However, in the case at hand, the deceased is stated to be 16 years of age though he is recorded to be 18 years of age in the post mortem report Ex.C2. There is nothing on record suggestive of the fact that the deceased was suffering from any disability to impair his capacity to work and earn livelihood for himself and his family. Taking a clue from the minimum wage available at the relevant time, income of the deceased is assessed at ₹ 3600/- per month. Claimant shall be entitled to benefit of addition in income for future prospects at the rate of 40%. In this context, reference can be made to judgment of this Court **National Insurance Company Ltd. vs. Pushpa Singh Chauhan and others** FAO No. 1502 of 2015 decided on 20.03.2015 that stands affirmed by Hon'ble the Supreme Court in **SLP(C) No.19533 of 2015**. The appropriate multiplier would be 18 and deduction for personal expenses to the extent of 50%. Accordingly, loss of dependency is

calculated at ₹ 5,44,320/- (₹3600 x 12 x 18) + (40% future prospects)-(50% deduction for personal expenses).

Under conventional heads, the claimant shall be entitled to ₹ 30,000/- , detailed hereunder:-

Funeral expenses ₹ 15,000/-

Loss of estate ₹ 15,000/-

So far as plea of the respondent that the deceased did not possess a licence to drive the motor cycle No. PB-59-A-2422 used by him at the time of occurrence, no such factual plea was raised before the Tribunal and the same cannot be allowed to be raised for the first time in appeal. In this view of the matter, contention raised by counsel for the insurance company is not tenable.

For the foregoing reasons, claimant shall be entitled to compensation of ₹ 5,74,320/- and additional amount of ₹ 3,24,320/- (₹ 5,74,320 - 2,50,000) payable with interest at the rate of 7.5% p.a. from the date of petition till realisation. Accordingly, the award passed by the Tribunal is modified in the aforesaid terms.

The appeal stands partly allowed.

(REKHA MITTAL)
JUDGE

31.07.2018
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No