IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3170 of 2012 (O&M)
Date of Decision : 02.04.2018

Gurdev Kaur and another ....Appellants

Versus

Kaka Singh @ Kaka Khan and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Shashi Ghuman, Advocate
for the appellants.

Mr. Kamlesh Soni, Advocate
for Mr. Parminder Singh, Advocate
for respondent no. 3.

Qua respondent no. 4, appeal has already been dismissed.

Surinder Gupta, J.

This is appeal by claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Fatehgarh Sahib (later referred to as 'the Tribunal') for death of Mohan Singh Dhindsa (later referred to as 'the deceased'), in a motor vehicle accident on 13.07.2008 with mini bus bearing registration no. PB-07A-9915 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal is enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. The Tribunal vide award dated 23.02.2012 awarded compensation of ₹2,20,000/- to claimants-appellants, which was computed as follows:-

(i)	Name of the deceased	Mohan Singh Dhindsa
(ii)	Age of the deceased	61 years

(iii)	Annual income of the deceased as assessed by the Tribunal after deducting half of his total income towards his personal expenses.	₹30000
(iv)	Amount of dependency after applying the multiplier of 7	(₹30000X7) = ₹210000
(v)	Compensation for loss of consortium	₹10000
Total		**₹220000**

4. Learned counsel for appellants has argued that the deceased after retirement from service was a practicing advocate at Fatehgarh Sahib. He had retired as Public Prosecutor and was having a very good practice. The Tribunal has assessed his income between ₹5000/- to ₹6000/- per month but has taken the same as ₹5000/- out of which half of his income was deducted towards personal expenses of the deceased instead of 1/3rd as he was having his wife and a son. Claimants have examined AW-2 Bhupinder Singh, who has stated that he was working as clerk with the deceased, who was having monthly income of ₹30,000/- to ₹50,000/-. Though, no evidence of income tax return of the deceased has come on record still his income could be taken as below level of income tax. Claimants are also entitled to compensation under the conventional heads as per law settled by Hon'ble Apex Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009***.

5. Learned counsel for respondent no. 3 has argued that the accident had taken place in the year 2008. Claimants have not produced any proof regarding income of the deceased. In case he had been earning ₹30,000/- to ₹50,000/- per month in addition to his pension, he must have filed income tax return. This shows that income of the deceased was below the level of income exempted for income tax. Regarding compensation under conventional heads, he has argued that the same could be allowed keeping in

view the fact that accident had taken place in the year 2008 and prevailing price index at that time.

6. This fact was proved on record and even accepted by the Tribunal that the deceased was practicing as an advocate. He was not a novice of this profession as earlier he had been working as Public Prosecutor. However, in the absence of any proof of his income and income tax return filed by him, the Tribunal was certainly in difficulty to assess actual income of the deceased. The Tribunal was of the view that he must have been earning somewhere between ₹5000/- to ₹6000/- per month, but it has taken his income as ₹60000/- per annum. Following the approach of Tribunal regarding income of the deceased, I am of the opinion that the same can be taken as ₹75,000/- per annum. Keeping in view the year of accident, claimants are also allowed lump sum compensation of ₹50,000/- for loss of consortium, loss of estate and funeral expenses. The deceased has left behind his wife and son, as such, 1/3rd income of the deceased is to be deducted towards his personal expenses.

7. In view of my above discussion compensation, to which claimants-appellants are entitled, is computed as follows:-

(i)	Annual income of the deceased	₹75000
(ii)	1/3rd of (i) above deducted towards personal expenses	(₹75000- ₹25000) = ₹50000 per annum
(iii)	Compensation calculated after applying the multiplier of 7 in view of age of the deceased	(₹50000X7) = ₹350000
(iv)	Compensation towards loss of consortium, loss of estate and funeral expenses	₹50000
	Total	**₹400000**

8. As a sequel of my discussion above, the instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the

compensation allowed to claimants for death of Mohan Singh Dhindsa is enhanced from ₹2,20,000/- to ₹4,00,000/-. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of instant appeal till actual realization. Claimants will share the enhanced amount of compensation as follows:-

(i) Appellant no. 1 (wife) : 70%

(ii) Appellant no. 2 (son) : 30%

9. In the event of demise of any of the claimants before or after disposal of this appeal, compensation of his/her share shall be paid to surviving claimant.

April 02, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*