IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3478-2012 (O&M)
Date of decision: 02.08.2018

SAPNA DEVI AND ORS. ... Appellants

Versus

JAFARU AND OTHERS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Atul Yadav, Advocate
for the appellants.

None for the respondents.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Yogesh Kumar in a motor vehicular accident that took place on 04.11.2010.

The Tribunal has assessed loss of dependency of Rs.13,77,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.9000/-
2. Multiplier	17
3. Deduction for personal expenses	1/4th
4. Loss of dependency	Rs.13,77,000/-

However, 50% of loss of dependency has been paid to the claimants as 50% negligence has been attributed to the deceased. In addition, the Tribunal has awarded compensation of Rs.20,000/- under conventional heads namely Rs.10,000/- qua loss of consortium, Rs.5,000/- loss to estate and Rs.5000/- for expenses on last rites.

Counsel for the appellants would urge that findings of the Tribunal attributing 50% negligence to the deceased are not based upon correct appreciation of testimony of Narender @ Kalu PW2, an eyewitness to the occurrence and author of FIR No.144 dated 04.11.2010 under Sections 279/304-A IPC Ex.P1. It is further argued that merely because the vehicles were coming from opposite direction and there was head on collision is not sufficient to attribute negligence to the deceased by applying the principle of res ipso loquitor.

With regard to compensation assessed by the Tribunal, counsel would urge that the deceased was running a furniture shop under the name of Raghav Furniture House. He was also working as an agent of LIC, a source of income for the family. The claimants have produced passbooks of bank accounts Exs.P15 and P16 wherein there are number of credit entries pertaining to lakhs of rupees. Claimants are entitled to benefit of addition in income for future prospects and adequate compensation under conventional heads.

There is no representation on behalf of the respondents though earlier a representative of the insurance company appeared in the case.

Narender @ Kalu PW2 tendered into evidence his affidavit Ex.PW2/A and the facts narrated by him in examination in chief are reproduced in para 11 of the award. The Tribunal has not noticed any facts elicited in cross examination of Narender on the basis whereof, finding can be recorded that deceased can be attributed negligence for the occurrence. The mere fact that the truck had directly hit the car from the front side is not sufficient to attribute negligence to the deceased when examined in the light of testimony of Narender wherein he had stated that truck bearing No.HR74-5158 driven by respondent No.1 rashly and negligently came from wrong direction and hit the car of deceased from front side. The witness has also deposed that the deceased was driving the car at a moderate speed on his correct left side of the road by following traffic norms and taking safety precautions. Indisputably, the driver of offending truck did not appear in the witness box to say something as to how the occurrence in question took place much less that the deceased can be blamed for the accident. No plea was raised by the respondents before the Tribunal that present is a case of contributory negligence of the deceased. On the contrary, the respondents denied the accident and involvement of the vehicle in question. An adverse inference is liable to be drawn against the respondent for failure of the driver to appear in the witness box without any tangible explanation. In this view of the matter, I find merit in contention of the claimants that findings recorded by the Tribunal attributing negligence to the deceased and that too to the extent of 50% are not based upon correct appreciation of materials on record, thus, liable to be set aide. Consequently, findings of the Tribunal on issue No.1 are modified to the effect that accident occurred due to sole rashness and negligence attributable to Jafaru, driver of the offending vehicle.

This brings the Court to quantum of compensation assessed by the Tribunal. The claimants examined Narender PW5 to prove that the deceased was doing business of furniture under the name and style of Raghav Furniture House. Narender has deposed that he (deceased) had income of Rs.25,000/30,000/- per month from furniture house. Narender was paid Rs.5000/- per month as salary and there were 4/5 other employees working with him at Raghav Furniture. As has been rightly noticed by the Tribunal, claimants have not produced any documentary evidence in support of their plea that deceased was the proprietor of Raghav Furniture shop. Assuming that deceased was running the furniture shop and Narender was working with him. If Narender was being paid Rs.5000/- per month and 4-5 other employees were also working there and the deceased had monthly income of Rs.25,000/-/30,000/- per month, there would hardly be any profit from the furniture shop. I have gone through the documents exhibited on record particularly bank passbooks showing certain credit entries in the month of April, 2010. On the same date, there are three credit entries worth Rs.9 lakh received by way of cheques of three different banks. The claimants have failed to adduce any clear evidence as to who issued these cheques and for what purpose. In this view of the matter, three credit entries on 17.04.2010 cannot form the basis to say something about income of the deceased.

The Tribunal has assessed income of the deceased at Rs.9000/-

per month which is more than monthly wage of a skilled labour. There is no justification for enhancement of income of the deceased. However, the claimants shall be entitled to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses allowed by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.19,27,800/- [(Rs.9000 x 12 x 17) + (40% future prospects) – (1/4th deduction for personal expenses)]

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.19,97,800/- and the additional amount is Rs.12,89,300/- [(19,97,800 – (6,88,500 + 20,000)], payable with interest @ 7.5% per annum from the date of petition till realization. The additional amount shall be shared by the widow and minor children of the deceased in equal ratio. The amount falling to share of minors shall be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

02.08.2018
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No