IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-376-2012 (O&M)
Date of Decision:31.08.2018

Sarda Devi & others ... Appellants

Versus

Davender Kumar Sharma & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ajit Kumar, Advocate for
Mr. Ram Darshan Yadav, Advocate for the appellants.

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate for the Insurance Company.

...

<u>TEJINDER SINGH DHINDSA, J. (ORAL)</u>

This is claimants' appeal seeking enhancement.

2. Briefly noticed, a claim petition was filed under Section 166 of the Motor Vehicle Act, 1988 claiming compensation to the tune of Rs.30 lakhs on account of death of Ramphal in a motor vehicle accident that took place on 12.05.2010.

3. Claimants were the widow and three sons of the deceased aged 23 years, 19 years and 16 years respectively.

4. Claim petition having been contested, the following issues were framed by the Tribunal:

"1. Whether the accident causing death of Ramphal took place on 12.5.2010 due to rash and negligent driving of vehicle bearing registration No.HR-36G-1731 driven by respondent no.1 as alleged? OPP

2. If issue No.1 is proved, whether the petitioners are entitled

for compensation, if so, to what amount and from whom? OPP
3. Whether the respondent No.1 was not holding a valid and effective driving license at the time of alleged accident, if so, its effect? OPR
4. Relief."

5. Insofar as issue No.1 is concerned, the Tribunal returned findings in favour of the claimants and held that death of Ramphal had taken place on account of rash and negligent driving of vehicle bearing registration No.HR-36-G-1731 driven by respondent No.1, namely, Devender Kumar.

6. Insofar as quantum of compensation is concerned, Tribunal has assessed the monthly income of the deceased as Rs.4800/-. Deduction of 1/3rd has been made towards personal and living expenses of the deceased. Taking the age of the deceased as 50 years, multiplier of 13 has been applied. An amount of Rs.10,000/- has been awarded towards funeral expenses and the total compensation amount of Rs.5,09,200/- has been awarded along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization. Apportionment of the compensation amount has been directed in a manner whereby a sum of Rs.2,50,000/- has been awarded in favour of the widow/claimant No.1 and the balance amount equally in favour of other three claimants i.e. sons of the deceased.

7. Liability to pay the compensation amount has been affixed jointly and severally upon the owner/driver of the offending vehicle and respondent No.3/Insurance Company.

8. It would be apposite to notice that Insurance Company has not filed cross appeal assailing the award dated 12.10.2011 passed by the Motor Accident Claims Tribunal, Rewari.

9. I have heard counsel for the appellants as also counsel representing the contesting Insurance Company.

10. The only issue involved in the instant appeal is with regard to quantum of compensation.

11. Even though, the claimants had asserted that the deceased was earning Rs.10,000/- per month, yet no evidence had been adduced on record to corroborate and to prove such stand. Tribunal by way of approximation has assessed the monthly income of the deceased as Rs.4800/- per month. Even though, it is the contention by counsel representing the Insurance Company that as on the date of accident, the minimum wages admissible to an unskilled worker were Rs.4200/- approximately, yet this Court is not inclined to vary the figure arrived at by the Tribunal i.e. Rs.4800/- per month as income of the deceased.

12. The specific stand and assertion taken by the claimants in the claim petition was that all of them were entirely dependant upon the deceased. Even while awarding compensation and apportioning the same, claimants/appellant No.2, namely, Karambir Singh, aged 23 years has been treated to be a dependant of the deceased and has been given a share out of the compensation amount. Keeping in view the number of dependants i.e. widow and three sons, the Tribunal ought to have made a deduction of $1/4^{th}$ towards personal and living expenses instead of the cut of $1/3^{rd}$ that has been applied. It is so directed.

13. Age of the deceased has been accepted by the Tribunal as 50 years and as mentioned in the Post Mortem Report Ex.P-2. Tribunal has completely overlooked the aspect of increase in income towards future

prospects. I direct an increase in income at the rate of 25% towards future prospects.

14. Tribunal has been rather frugal in having awarded a sum of Rs.10,000/- only towards funeral expenses. The claimants/appellants are held entitled to a sum of Rs.70,000/- under the conventional heads i.e. loss of consortium, loss of estate and last rites.

15. In view of the discussion herein above, the compensation amount is re-assessed and calculated as follows:

Sr. No.	Computation/Head	Revised calculation
1.	Income Rs.4800/-	25% increase towards future prospects i.e. 4800+1200=6000/-
2.	1/4th cut towards personal and living expenses of the deceased	6000-1500=4500/-
3.	Compensation after applying multiplier of 13	4500 x 12=54,000/- 54000 x 13 =7,02,000/-
4.	Conventional Heads i.e. funeral expenses and loss of consortium etc.	Rs.70,000/- 7,02,000+70,000=7,72,000/-
5.	Total	Rs.7,72,000/-

16. The afore calculated/enhanced compensation amount be released in favour of the claimants along with interest at the rate of 6% from the date of filing of the claim petition till actual realization. The method of apportionment directed by the Tribunal shall stay intact.

16. Appeal is allowed in the aforesaid terms.

31.08.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes

ii) Whether reportable? No