IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5038 of 2012 (O&M)
Date of decision:04.10.2018.

Sinder Kaur and others

...Appellants

Versus

Gurvinder Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gurinderjit Singh, Advocate for the appellants.

Mr. R.N. Singal, Advocate for respondent No.3/Insurance Company.

LISA GILL, J.

CM No.22207-22208-CII of 2012

For the reasons mentioned in the applications and the arguments addressed, delay of 90 days in refiling and 21 days in filing of the appeal is condoned.

Applications are allowed.

FAO No.5038 of 2012

This appeal has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Motor Accident Claims Tribunal, Patiala (`Tribunal' for short) vide award dated 01.12.2011 on account of death of Jasvir Singh in a motor vehicle accident on 31.08.2010.

The claimants, who are the wife, children and father of the deceased, filed a petition under Section 166 of the Motor Vehicles Act, seeking compensation on account of death of Jasvir Singh due to injuries received in a motor vehicle accident which took place on 31.08.2010. FIR No.237 dated 03.09.2010 was registered against respondent No.1. It was pleaded that the deceased at the time of his death was driving a three-wheeler besides doing dairy farming and agriculture work. His total monthly income was stated to be Rs.15,000/-. He was 35 years old at the time of accident. 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 held the age of the deceased to be 35 years at the time of his death and assessed his income as Rs.5000/- per month considering him an unskilled daily wage labourer. Deduction of $1/4^{th}$ was effected towards the personal expenses. After applying a multiplier of 16, total dependency was assessed at Rs.7,20,000/-. A sum of Rs. 5000/- each was awarded towards funeral expenses and loss of the estate. Another sum of Rs.10,000/- was awarded towards loss of consortium. Thus, the claimants were held entitled to a total compensation of Rs.7,40,000/- along with interest @ 9% per annum from the date of filing of claim petition till realisation.

Learned counsel for the appellants argues that increase in income on account of future prospects should be afforded @ 40% in view of the judgment in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009. Amount awarded under the conventional heads needs to be enhanced as per the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. 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 vehemently argues that the FIR in question has been lodged three days after the accident. Specific details of the offending vehicle were not given in the FIR. It is further contended that PW2 was not, in fact, an eye witness of the accident, as projected. Therefore, the appellants are not entitled to any compensation at all.

It is, however, not disputed that the Insurance Company has not filed any appeal though learned counsel for the Insurance Company urges that even in this appeal filed by the appellants, this Court should interfere under Order 41 Rule 31 CPC to set aside the award dated 01.12.2011 in favour of the Insurance Company.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The deceased was admittedly 35 years old at the time of the accident. FIR No.237 was registered on 03.09.2010. Charge sheet Ex.P5 was filed for prosecuting the driver of the offending vehicle, though it is intimated that the matter was compromised between the parties before the concerned Criminal Court. A perusal of the file reveals that as per the pleadings, Jasvir Singh was coming towards his village Salempur Sekhan from Village Ghaggar Sarai on his three-wheeler. PW2 specifically stated that he was a witness of the accident in question. There is nothing on record to rebut the evidence of PW2. Respondents No.1 and 2 have not stepped in the witness box. Charge sheet Ex.P5 was proved on record. The claimants in the present proceedings have successfully proved the accident on preponderance of probabilities. Proof beyond reasonable doubt is not the requirement in the present proceedings. The Insurance Company has not filed any appeal and neither have any cross objections have been filed though the present appeal was filed way back in 2012. I do not find any merit, whatsoever, in the arguments raised by learned counsel for the Insurance Company to the effect that the impugned award should be set aside in favour of the Insurance Company in this appeal filed by the claimant.

It is not in dispute that Jasvir Singh died due to injuries received in a motor vehicle accident which took place on 31.08.2010 due to the rash and negligent driving of the offending vehicle by respondent No.1. Income of the deceased is not in dispute. In view of the guidelines laid down by the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, 40% increase in income has to be afforded on account of future prospects. In view judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018, appellant/claimant No.1 is entitled to Rs.40,000/- for spousal consortium, appellants/claimants No.2 to 6 are entitled to Rs.40,000/- each for parental consortium and appellant/claimant No.7 is entitled to Rs.40,000/- for filial consortium. The claimants are entitled to Rs.15,000/- each for loss of estate and funeral expenses instead of Rs. 5,000/- each. Deduction of $1/4^{th}$ towards personal expenses has rightly been effected. Multiplier of 16 has rightly been applied.

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

Sr.No.	***Heads of Claim***	
1.	Income	5000 p.m. i.e., 60,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	60000+24,000 (60,000x40%) = 84,000/-
3.	Income after deduction of 1/4th on account of personal expenses	84,000–21,000 (84,000/4) = 63,000/-
4.	Total dependency after applying a multiplier of 16	(63,000 **x**16) =10,08,000/-
5.	Loss of estate	15,000/-
6.	Loss of funeral	15,000/-
7.	Loss of consortium to all seven claimants @ Rs.40,000/-x7= Rs.2,80,000/-	2,80,000/-
	Grand Total	13,18,000/-

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 01.12.2011, present appeal is disposed of.

(LISA GILL)
JUDGE

October 04, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No