IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5349 of 2012 (O&M)
Date of decision:25.10.2018.

Suman and others

...Appellants

Versus

Hardeep Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ajit Sihag, Advocate for the appellants.

Mr. Subhash Goyal, Advocate for respondent No.3.

LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Motor Accident Claims Tribunal, Hisar (`Tribunal' for short) vide award dated 12.05.2012 on account of death of Sandeep Kumar in a motor vehicle accident on 07.01.2011.

The claimants, who are the wife and parents of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Sandeep Kumar due to injuries received in a motor vehicle accident which took place on 07.01.2011. FIR No.19 dated 07.01.2011 was registered under Sections 279, 304-A and 337 IPC at Police Station Sadar Hisar against respondent No.1. It was pleaded that the deceased at the time of his death was a partner in a Government approved Company under the name and style of M/s Prem Contractors and was also an agent of Priya Privar. He was 24 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 the 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 concluded the deceased to be 24 years old at the time of his death and assessed his annual income as Rs.99,950/- per month. Deduction of 1/3rd was effected towards the personal expenses keeping in view the number of dependents. After applying a multiplier of 18, total dependency was assessed at Rs.11,93,400/-. A sum of Rs.5000/- each was awarded towards funeral expenses and loss of estate. Another sum of Rs.25,000/- was awarded towards loss of love and affection. Thus, claimants were held entitled for total compensation of Rs.12,28,400/-, rounded off to Rs.12,28,000/- along with interest @ 9% per annum from the date of filing of claim petition till realisation.

Learned counsel for the appellants argues that it is a matter of record that income tax returns for the years 2009-2010 and 2010-2011 Ex.P7 and P10 respectively, were proved on record. As per income tax return for the year 2009-2010 (Ex.P7), income of the deceased was Rs.1,46,886/- and as per income tax return for the year 2010-2011 (Ex.P10), income of the deceased was Rs.99950/-. Income from other sources was Rs.21,934/-. Learned Tribunal has assessed the income of the deceased at Rs.99950/- Income from other sources has rightly been ignored, but in the facts and circumstances of the case, income of the deceased should be assessed by taking an average of both the income tax returns, Ex.P7 and P10. Increase in income on account of future prospects should be awarded. Meagre amount has been awarded under the conventional heads and the same should be enhanced. It is thus prayed that this appeal be allowed and compensation awarded be enhanced.

Learned counsel for the Insurance Company has refuted the above said arguments while submitting that the impugned award has been passed correctly and no ground for any enhancement is made out.

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

It is not in dispute that deceased died due to the injuries received in a motor vehicle accident which took place on 07.01.2011 due to the rash and negligent driving of the offending vehicle by respondent No.1. As per income tax returns for the year 2009-2010 and 2010-2011 (Ex.P7 & P10), income of the deceased was Rs.1,46,886/- and Rs.99950/- respectively. Income from other sources was Rs.21,934/-. However, learned Tribunal has assessed the income of the deceased at Rs.99950/-. Income from other sources has rightly been ignored but in the facts and circumstances of the case, it is just and expedient to assess the income of the deceased by taking an average of both the income tax returns Ex.P7 and P10. Income of the deceased is thus assessed as Rs.1,23,418/- per annum. 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. Deduction of 1/3rd towards personal expenses has rightly been effected keeping in view the number of dependents. Multiplier of 18 has rightly been applied keeping in view the age of the deceased. In view of 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, appellant No.1 is entitled to Rs.40,000/- towards spousal consortium instead of Rs.25,000/- awarded for loss of love and affection and consortium and appellants No.2 and 3 are entitled to Rs.40,000/- each towards loss of filial consortium. The claimants are entitled to Rs.15,000/- each for loss of estate and funeral expenses instead of Rs. 5,000/- each already afforded towards funeral expenses and loss of estate.

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

Sr.No.	***Heads of Claim***	
1.	Income	Rs.1,23,418/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	1,23,418+49367 (1,23,418x40%) = 1,72,785/-
3.	Income after deduction of 1/3rd on account of personal expenses	1,72,785–57,595 (1,72,785/3) = 1,15,190/-
4.	Total dependency after applying a multiplier of 18	(1,15,190 **x**18) =20,73,420/-
5.	Loss of estate	15,000/-
6.	Loss of funeral	15,000/-
7.	Loss of consortium to widow and parents @ Rs.40,000/- each 40,000x3=1,20,000/-	1,20,000/-
Grand Total		22,23,420/-

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 12.05.2012, present appeal is disposed of.

(LISA GILL)
JUDGE

October 25, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No