IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1397 of 2013 (O&M)
Date of decision:12.11.2018.

Smt. Krishna and others

...Appellants

Versus

Tek Chand and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Madan Gopal Gupta, Advocate for the appellants.

Mr. M.B. Jain, Advocate for respondent No.3/Insurance Company.

LISA GILL, J.

This appeal has been filed by the claimants impugning award dated 03.01.2013 passed by learned Motor Accident Claims Tribunal, Kaithal (`Tribunal' for short) to the extent that petition under Section 166 of the Motor Vehicles Act filed by the claimants has been dismissed on the ground that the claimants are to receive an amount of Rs.31,37,665/- from the Government, being the dependents of the deceased, which is more than the compensation which the claimants were found entitled to.

The claimants, who are the wife and children of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Raghubir due to injuries received in a motor vehicle accident which took place on 01.11.2010. FIR No.79 dated 01.11.2010 was registered under Sections 279, 304-A and 427 IPC at Police Station Dhand against respondent No.1. It was pleaded that the deceased at the time of his death was working as a Driver in Haryana Roadways, earning Rs.28,565/- per month. He was 44 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 44 years old at the time of his death and assessed his annual income as Rs.1,98,780/- (Rs.16,565x12). After deduction of Rs.7302/-, stated to have been paid as income tax, the remaining income would come to Rs.1,191,478/-. 30% increase in income was afforded for future prospects. Deduction of 1/4th was effected towards the personal expenses keeping in view the number of dependents. After applying a multiplier of 14, total dependency was assessed at Rs.26,13,646/-. A sum of Rs.30,000/- was awarded under the conventional heads. Thus, in all, claimants were held entitled for total compensation of Rs.26,43,646/- along with interest @ 9% per annum from the date of filing of claim petition till realization. However, the petition filed by the claimants was dismissed as a sum of Rs.31,37,665/- was to be received from the State Government under its policy and this amount was more than the compensation to which the claimants were found entitled to.

Aggrieved therefrom this appeal has been filed.

Learned counsel for the appellants, while not disputing that the amount to be received from the State Government has to be deducted from the total compensation assessed in the present proceedings, argues that the learned Tribunal has erred in assessing the income of the deceased as Rs.16,565/- while ignoring the salary certificate (Ex.P2) which reflected the income of the deceased as Rs.19,600/- per month. Moreover, in case just and proper compensation is awarded under the conventional heads, the appellants are entitled to an amount more than Rs.31,37,665. It is thus prayed that this appeal be allowed and compensation be awarded to the appellants.

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 to interfere therein is made out.

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

Perusal of Ex.P2, the salary certificate, reveals that the deceased was employed as a Driver with Haryana Roadways, receiving a salary of Rs.19,600/- at the time of his death. His income, thus, has to be assessed as Rs.19,600/- and not Rs.16,565/-. Learned Tribunal has erred in assessing his income as Rs.16,565/-. Accordingly, income of the deceased is assessed at Rs.19,600/- per month. Income tax to the tune of Rs.18,949/- is to be deducted. Increment of 30% on account of future prospects has to be afforded in view of the deceased being 44 years old at the time of accident. Deduction of 1/4th as effected towards personal expenses keeping in view the number of dependents and multiplier of 14 as applied by the learned Tribunal are upheld. 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 and appellants No.2 to 5 are entitled to Rs.40,000/- each towards loss of parental consortium. The claimants are entitled to Rs.15,000/- each for loss of estate and funeral expenses.

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

Sr.No.	***Heads of Claim***	
1.	Income	19,600/- p.m. i.e., 2,35,200/- per annum
2.	Total income after addition at the rate of 30% on account of future prospects	2,35,200+70,560 (2,35,200x30%) = 3,05,760/-
3.	Income after deduction of 1/4th on account of personal expenses	3,05,760–76,440 (3,05,760/4) = 2,29,320/-
4.	Total dependency after applying a multiplier of 14	(2,29,320 **x**14) =32,10,480/-
5.	Loss of estate	15,000/-
6.	Loss of funeral	15,000/-
7.	Loss of consortium to all five appellants @ Rs.40,000/- each 40,000X5=2,00,000/-	2,00,000/-
Grand Total		34,40,480/-

Learned counsel for the appellants does not dispute that the amount of Rs.31,37,665/- i.e. the amount to be received by the claimants in terms of the policy of the State of Haryana, has to be deducted from the total amount of compensation i.e. Rs.34,40,480/-. The appellants are thus entitled to receive Rs.3,02,815/-. Appellants shall be entitled to interest at the rate of 7.5% per annum on the said compensation amount from the date of filing of the petition till realization. Appellant No.1 is entitled to 50% of the said amount, while the rest would be disbursed equally amongst the other appellants i.e. the children of the deceased.

Accordingly, the present appeal is disposed of in the aforesaid terms.

(LISA GILL)
JUDGE

November 12, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No