IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : 13.11.2018

1. **CM-18057-CII-2018 in/and**
FAO No.2035 of 2013 (O&M)

Parkash Devi and another

...... Appellants

Versus

Pepsu Road Transport Corporation Limited
and others

...... Respondents

2. **FAO No.6260 of 2013 (O&M)**

Richa Bajaj and others

...... Appellants

Versus

Pepsu Road Transport Corporation Limited
and others

...... Respondents

3. **FAO No.6185 of 2014 (O&M)**

Pepsu Road Transport Corporation Limited

...... Appellant

Versus

Richa Bajaj and others

...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. Pankaj Katia, Advocate
for the appellants (FAO No.2035 of 2013).

None for the appellants (FAO No.6260 of 2013).

Mr. Sandeep Kumar Khunger, Advocate
for the respondents-appellant-PRTC.

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AJAY TEWARI, J. (Oral)

CM-18057-CII-2018 in FAO No.2035 of 2013

This application has been filed for pre-poning the date of hearing of the main case. For the reasons recorded, the application is allowed and the main case is taken up today.

This order shall dispose of above mentioned appeals.

The brief facts of the case are that on 13.07.2011, Vakil Chand Bajaj (since deceased) while riding motorcycle bearing Registration No.BR-7B-8614 was coming from Halwara, District Ludhiana and going to Gidderbaha. He was being followed by his son Anmol Bajaj and Kishore Chand s/o Hari Ram, who were on their separate motorcycle and at about 7.45 a.m. when they were about ¾ kilometer behind the Bus stand of village Balluana, a bus bearing R.C. No.PB-11H-9830 being driven by respondent No.2 at a very fast speed and in a rash and negligent manner came from behind and struck against the motorcycle. As a result of which, Vakil Chand Bajaj fell down on the road and sustained multiple grievous injuries on the various parts of his body and died. Claim petition was filed. The Tribunal held that the accident had been caused by the rash and negligent driving of the respondent No.2 and ordered the compensation as mentioned above.

<u>FAO No.2035 of 2013 and FAO No.6260 of 2013</u>

The appeal bearing **FAO No.2035 of 2013** has been filed by the parents of the deceased and the appeal bearing **FAO No.6260 of 2013** (respondents in **FAO No.6185 of 2014**) has been filed by the widow and two children of the deceased for enhancement of compensation and for modifying the award dated 25.01.2013 passed by the Motor Accident Claims Tribunal, Bathinda granting compensation of Rs.12,10,000/- alongwith interest @ 9% per annum in favour of the appellants and against the respondents.

Counsel for the appellants has argued that income tax returns for the assessment year 2004-2005 to 2010-2011 were brought into evidence and as per those returns there was an increase in the income every year and the last return for the year 2010-2011 reflected his income of Rs.2,06,558/- say Rs.2,10,000/- and the tribunal erred in reducing it to Rs.1,80,000/- only on the ground that the post death income tax return was not placed on the record.

On the other hand counsel for the respondent-PRTC has argued that the reason given by the tribunal viz. that a business man's income can fluctuate can not be said to be an illogical reason. That may be so but here we have a serious of returns where the income is shown to be increasing every year. It would also be seen that the deceased died on 13.07.2011 i.e. within little more than 3 months of the assessment year 2011-2012. In the circumstances, the absence of that return can not be held to be determinative. Resultantly, I take the income at Rs.2,10,000/-

per annum. I find that there were four claimants i.e. the widow, one major son, a minor daughter and an aged mother. Keeping in view the young age of the major son i.e. 20 years, I do not deem it appropriate to impose a deduction of 1/3rd and keep it at 1/4th.

Counsel for the appellants-claimants has argued that in view of the judgment passed in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009,*** 25% had to be awarded on account of future prospects. Counsel for respondent-PRTC is not in a position to deny this. I find this to be indeed so and it is held that 25% has to be awarded towards future prospects.

Counsel for the appellants-claimants further states that in view of the judgment of the Supreme Court in the matter of ***Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298*** the multiplier of 14 had to be applied instead of 10. In view of the judgment passed in ***Sarla Verma (supra)*** this argument is also accepted. It is held that multiplier of 14 has to be applied instead of 10.

Counsel for the appellants-claimants further states that under the conventional heads only Rs.10,000/- has been awarded and as per the judgment passed in ***Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018,*** filial consortium had to be awarded. I award Rs.40,000/- each to the widow, minor daughter and the mother and Rs.30,000/- for funeral expenses and loss of estate. The amount of Rs.10,000/- already awarded is to be deducted.

Apart from the individual amounts awarded, the enhanced compensation shall be divided in the following manner that out of the enhanced amount 50% would go to the widow, 20% would go to the daughter, 10% would go to the son and 20% would go to the mother.

Counsel for the appellants-claimants states that interest @9% per annum has been awarded. In the circumstances, the enhanced compensation would carry interest @10% per annum.

Consequently, the appeals bearing **FAO No.2035 of 2013** and **FAO No.6260 of 2013** stand allowed in the above terms and the award is modified accordingly.

FAO No.6185 of 2014

The appellant-PRTC has filed an appeal challenging the compensation amount. The ground taken in that the business which the deceased was running must still be in existence and only his managerial contribution should have been taken.

Counsel for the respondents-claimants has countered by arguing that the principle of the existing business can not be universally applicable and even though there may be some businesses which may continue after the death of the owner, there may be other business like running dhaba which may be completely dependent on the owner because these businesses do no require a heavy investment.

I am incline to agree with the counsel for the respondents-claimants and decline the argument made by the counsel for the appellant-PRTC.

Consequently, the appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

13.11.2018
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No