IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.226 of 2013 (O&M)
Date of Decision: 24.07.2018

Shobha Rani and others

... Appellants

Versus

Mandeep Singh and others

... Respondents

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

Present:- Mr. S.S.Sodhi, Advocate,
for the appellants.

Mr. P.S.Sullar, Advocate,
for respondent Nos.1 and 2.

Mr. Rajneesh Malhotra, Advocate,
for Insurance Company/respondent No.3.

TEJINDER SINGH DHINDSA, J.

This is a claimants' appeal seeking enhancement of compensation.

Brief facts that may be noticed are that Gopal Krishan died in a vehicular accident on 21.10.2011 while he was proceeding on a scooter from Kharar to Kurali and was struck from the back side by a Endeavour Car bearing registration No.PB-65-H-9999 and which was being driven by Mandeep Singh (respondent No.1). The offending vehicle was stated to be owned by Jaspal Singh respondent No.2 and Insured with respondent No.3.

The claim petition was filed under Section 166 of the Motor Vehicles Act by the claimants/present appellants who happen to be the widow and 03 sons of the deceased. Compensation to the tune of Rs.25 lakhs was claimed.

Upon pleadings of the parties, the following issues were framed by the Trial Court:-

1) ***"Whether Gopal Krishan died in a road side accident caused by respondent No.1 while driving of car No.PB-65-9999 in a rash and negligent manner? OPP***
2) ***Whether the claimant is entitled to receive compensation as prayed for? If so, to what extent and from whom? OPP.***
3) ***Whether the respondent No.1 was not holding a valid driving license, valid registration certificate, fitness certificate, route permit of the car in question at the time of accident?OPR-3.***
4) ***Whether the petition is not maintainable? OPR.***
5) ***Relief."***

On issue No.1 findings were returned in favour of the claimants and it was held that deceased Gopal Krishan had died on account of rash and negligent act of driving of respondent No.1 i.e. driver of the offending vehicle.

Insofar as issue No.2 is concerned, the Tribunal noticed the age of the deceased to be 52 years and has taken his monthly income to be Rs.3500/-. A deduction of 1/3rd towards personal expenses was made and accordingly the annual dependency of the claimants on the income of the deceased was calculated as Rs.28,000/-. A multiplier of 11 was applied and compensation amount was worked out to be Rs.3,08,000/-. An amount of Rs.10,000/- was awarded towards loss of consortium to the wife and a sum of Rs.5,000/- was awarded towards funeral expenses.

The total compensation amount awarded was that Rs.3,23,000/-. The compensation liability was fastened upon respondent No.3-Insurance Company. The Tribunal further held that since nothing had come on record to show that claimant Nos.2 to 4 i.e. the three sons of the deceased were dependent on the income of the deceased as such the amount of compensation was directed to be disbursed to claimant No.1 i.e. widow of the deceased.

I have heard counsel for the parties.

The only issue that arise in the instant appeal is with regards to quantum of compensation.

The expression "just compensation" was considered by the Supreme Court of India in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77*** and it was held that compensation awarded by the Tribunal does not become "just compensation" merely because the Tribunal considered it to be just. The expression "just" is adequate compensation which is fair and equitable, on the facts and circumstances of the case so as to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation.

Adverting back to the facts and circumstances of the present case, this Court is of the considered view that compensation awarded by the Motor Accident Claims Tribunal is on the lower side and as such requires to be enhanced.

The claimants had set up a case that the deceased was working as a shopkeeper and was earning Rs.18,000/- per month.

No cogent and credible evidence had been adduced on record to substantiate such monthly income. Even balance sheets Ex.P-3 to P-6 were brought on record but the Tribunal has rightfully discounted the same since the same had been prepared by chartered accountant and who had not even stepped into the witness box to prove such documents. Further more, no registration certificate of the shop had been placed on record and even the day books or cash books etc. had not been forthcoming. As such while disbelieving the version of the claimants as regards the income of the deceased to be Rs.18,000/- the Tribunal has taken the income to be Rs.3500/- per month.

In the considered view of this Court, such income has been taken on the lower side. Learned counsel representing contesting respondent-Insurance Company does not dispute that at the relevant point of time i.e. 21.10.2011 the date of accident, the minimum wages admissible to an unskilled worker as per relevant State Notification were Rs.3692/- per month. Income of deceased accordingly is assessed as Rs.3692/- per month, since deceased was self-employed and 52 years of age, a 10% increase towards future prospects would be taken as per parameters laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

Counsel for the appellants has submitted that a cut off 1/4th should have been applied by the Tribunal towards personal expenses of the deceased as opposed to 1/3rd. Such submission is rejected as the finding has been recorded that three sons of the deceased were not dependent upon him and accordingly, the compensation amount assessed had been directed to be released in favour of the widow/claimant No.1.

The amount awarded under conventional heads i.e. loss of consortium, loss of estate and funeral expenses would stand enhanced to Rs.70,000/-.

In view of the discussion made above, the compensation amount is re-assessed as follows:-

Sr. No.	Head	Calculation
1.	Income 3500/- p.m.	Rs.3692 (minimum wages) + 10% increase towards future prospects =Rs.4062/-
2.	1/3rd deduction towards personal expenses of the deceased	Rs.4062-1340=2722/- 2722 x 12=32664/-
3.	Compensation after applying multiplier of 11	32664 x 11=3,59,304/-
4.	Conventional Heads: loss of consortium, loss of estate, funeral expenses	70,000/-
5.	Total	Rs. 4,29,304/-

The enhanced compensation is calculated and assessed hereinabove be released in favour of the claimant/appellant No.1 along with interest @ 6 % from the date of filing of the claim petition and till the date of realization.

Appeal is allowed in the aforesaid terms.

24.07.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes