IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2439-2013 (O&M)
Date of decision: 08.02.2018

AARTI AND ORS ... Appellants

Versus

MOHD. AYUDB AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Neeraj Gupta, Advocate
for the appellants.

Mr. R.K. Bashamboo, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Sushil Kumar in a motor vehicular accident that took place on 04.08.2010.

The Tribunal has awarded compensation to the tune of Rs.6,22,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Multiplier	17
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.6,12,000/-
5. Expenses on funeral	Rs.5000/-
6. Loss of consortium	Rs.5000/-

Counsel for the claimants has submitted that the claimants filed an application under Order 41 Rule 27 CPC for adducing additional evidence and the same was allowed by this Court vide order dated 27.04.2015. In pursuance of directions issued by this Court, claimants examined Sh. Kapil Dev Semwal, Deputy Manager HR & Admin in Napino Auto & Electronics Ltd., Haridwar. He has proved salary certificate of the deceased Ex.PW4/B and the document Ex.PW4/C whereby it has been amply proved that Sushil Kumar worked with the aforesaid company from 07.04.2008 to 03.07.2010 and his gross salary in the months of April, May and June, 2010 was Rs.9229/- per month. According to counsel, loss of dependency is liable to be assessed on the basis of gross salary of the deceased reflected in Ex.PW4/B. Another submission made by counsel is that the Tribunal has not allowed benefit of increase in income for future prospects and adequate compensation under conventional heads.

Counsel representing the insurance company, on the contrary, has submitted that in the gross salary of Rs.9229/- per month, there is reference to payment of bonus of Rs.700/-, conveyance allowance Rs.750/-, mobile allowance Rs.500/- and EPF employer Rs.571/- and the same are liable to be ignored while computing income of the deceased.

I have heard counsel for the parties, perused the paper book and the records.

As per the report prepared on the basis of additional evidence adduced by the claimants in pursuance of the order passed by this Court allowing application for additional evidence, Sushil Kumar (deceased) was an employee of Napino Auto & Electronics Ltd., Haridwar and his gross salary for the months April, May and June was Rs.9229/- each month. The deceased was paid bonus of Rs.700/- per month since April, 2010 onwards. The benefit of conveyance allowance and mobile allowance given by the employer by way of perks is to be included for computation of monthly income. In this context, reference can be made to judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. VS. Indira Srivastava and others, 2008(1) RCR (Civil) 359.** As such, I do not find merit in contention of the insurance company that amount representing bonus, conveyance and mobile allowance is liable to be ignored for computing income of the deceased. However, amount of EPF contributed by the employer would have been available, had the deceased continued in service. Under the circumstances, income of the deceased is assessed at Rs.8658/- per month (9229 – 571). As the deceased was less than 40 years of age, claimants shall be entitled to increase in income for future prospects @ 40%. The deduction for personal expenses and multiplier applied by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.16,48,484/- (Rs.8658 x 12 x 17) + (40% future prospects) – (1/3rd deduction for personal expenses).

Claimants shall be entitled to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270,** detailed hereunder:-

1. Loss of consortium Rs.40,000/-

2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.17,18,484/- and the additional amount is Rs.10,96,484/- (17,18,484 – 6,22,000), payable with interest @7.5% per annum from the date of petition till realization to Tamanna (minor) and Smt. Aarti in the ratio 70:30. The share of minor child shall be deposited in FDR payable on her attaining age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

08.02.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No