IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2820-2013 (O&M)
Date of decision: 03.04.2018

MUNISH SONI AND ANR ... Appellants

Versus

SUNIL KUMAR AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Suveer Sheokand, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr. D.K. Prajapati, Advocate
for respondent No.3.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Ramesh Soni in a motor vehicular accident that took place on 24.04.2010.

The Tribunal has awarded compensation of Rs.50,000/- under no fault liability by invoking Section 140 of the Motor Vehicles Act, 1988 (in short 'the Act').

Counsel for the appellants would argue that application for compensation was filed by sons of deceased Ramesh Soni and they fall within purview of legal representatives, an expression used in Section 166 of the Act. It is further argued that even if the claimants were working and earning their livelihood, they cannot be denied compensation by computing loss of dependency and under conventional heads. In support of his contention, he has relied upon judgment of this Court **United India Insurance Co. Limited Vs. Manjit Singh and others** along with connected case, FAO No.1276 of 2009 decided on 27.07.2010. Further reference has been made to judgment of the Full Bench of Kerala High Court **Rajan Vs. Biju, 2017(3) RCR (Civil) 706**.

Counsel for the claimants has submitted that the deceased was working with M/s Nicks (India) Tools at Village Khakat, Ludhiana at salary of Rs.18,650/- per month. Jagat Singh Saxena PW2, Assistant Manager of said concern was examined to prove employment and income of the deceased. In addition, the claimants proved the documents Ex.PW3/1 and Ex.PW3/2, income tax returns filed by the deceased by examining Smt. Shoba Kumari, Tax Assistant, Income Tax Department, Ludhiana PW3. The deceased was less than 60 years of age, therefore, claimants are entitled to addition in income for future prospects @ 10%. Admissible multiplier in the circumstances should be 9 and deduction for personal expenses to the extent of 1/3rd in the light of judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported the award allowing compensation of Rs.50,000/- to the claimants as they are not dependent upon income of the deceased. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court **Manjuri Bera VS. The Oriental Insurance Co. Ltd. and another, 2007 (2) RCR (Civil) 674**. Further argued that testimony of Jagat Singh Saxena with regard to salary of the deceased at Rs.18,650/- per month gets falsified and belied in view of the documents Ex.PW3/1 and PW3/2. In the first return for the assessment year 2008-09, income of the deceased from salary is shown approximately Rs.1 lakh per annum whereas in the second return, income from salary is Rs.45,620/- per annum. It is further argued that details with regard to income from other sources to the tune of Rs.96,670/- per annum shown in the income tax return for the assessment year 2009-10 are not given, therefore, the claimants cannot be heard to say that there is loss of income from other sources with the death of Ramesh Soni.

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

Indisputably, claimants are sons of deceased Ramesh Soni who was slightly less than 60 years of age at the time of occurrence. Counsel for the claimants has not disputed that the claimants were working and earning hand at the time of unfortunate demise of their father. In **Manjuri Bera's case** (supra), application for compensation was filed by a married daughter of Bata Krishna Mondal (since deceased). Hon'ble the Apex Court in para 15 of the judgment has held that where a legal representative who was not dependent files an application for compensation, quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency, claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. However, it has not been held by Hon'ble the Supreme Court that the claimants who are not dependent upon the deceased cannot be allowed compensation more than Rs.50,000/- provided in Section 140 of the Act.

Counsel for the insurance company has failed to point out any materials on record as to what is the income of the claimants or they were not getting contribution from their father who had died at the age of 60 years. This Court in **United India Insurance Company Ltd.'s case** (supra) has held that a legal representative which is even a wider term than a legal heir would be entitled to seek for compensation on the basis of what portion of money would have become available to the family and which would have become a part of the estate of the deceased. In that case, the Tribunal assessed compensation of Rs.12,96,000/- towards loss of dependency and it was affirmed by this Court payable to the husband and two sons of the deceased who were well provided for. Taking into consideration the judgment of this Court, in my considered opinion, claimants shall be entitled to compensation qua loss of dependency as well as under conventional heads.

This brings the Court as to what amount of compensation is payable to the claimants. As per plea of the claimants, deceased was working with M/s Nicks (India) Tools, Ludhiana. Jagat Singh Saxena brought on record salary register and photocopies of relevant entries of said register for the months of March and April, 2010, marked as Exs.A2 and A3. He has admitted in his cross examination that the salary was paid in cash. He has not brought the attendance register and leave register of Ramesh Soni. He has further deposed that Ramesh Soni joined their company in the year 2009. In the income tax return for the assessment year 2009-10, income of the deceased from salary is shown to be Rs.45,620/- per annum. The document Ex.PW3/2 creates a serious doubt with regard to employment of the deceased with M/s Nicks (India) Tools much less at salary of Rs.18,650/-. In the given scenario, the documents Exs.A2 and A3 cannot form the basis for computing loss of dependency.

An official from the Income Tax Department, Ludhiana produced income tax returns for the assessment years 2008-09 and 2009-10. By taking into account income from salary shown in income tax returns filed by the deceased, it is expedient in the interest of justice that income of the deceased is assessed at Rs.70,000/- per annum. Claimants shall be entitled to benefit of future prospects @ 10% as the deceased was less than 60 years of age having been born on 10.05.1950. The appropriate multiplier is 9 as the deceased was in the age bracket of 56 to 60 years. As the claimants were not solely dependent upon income of the deceased, deduction for personal expenses would be 50%. In this manner, loss of dependency comes to Rs.3,46,500/- (Rs.70,000 x 9) + (10% future prospects) – (50% deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and Rs.15,000/- for loss of estate.

Total compensation is Rs.3,76,500/- and the additional amount is Rs.3,26,500/- (3,76,500 – 50,000), payable with interest @ 7.5% per annum from the date of petition till realization, to be shared by the claimants equally.

The appeal is partly allowed in the aforesaid terms.

All other terms and conditions of the award shall remain intact.

03.04.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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