In the High Court of Punjab and Haryana at Chandigarh

FAO No. 3065 of 2013(O&M)
Date of Decision:28.9.2018

Vandana and others

---Appellants

vs.

Keshav and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Jasbir Singh Mor, Advocate
for the appellants
Mr. Nitin Kamboj, Advocate for
Mr. Munish Mittal, Advocate
for respondents No. 1 and 2
Mr. Sanjeev Goyal, Advocate
and Mr. Rajbir Singh, Advocate
for respondent No. 3

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<u>Rekha Mittal, J.</u>

Claimants are in appeal seeking enhancement of compensation on account of death of Sandeep Kumr Poonia in a motor vehicular accident that took place on 23.9.2010.

The Motor Accidents Claims Tribunal, Jind (in short “the Tribunal”) has awarded compensation of Rs. 36,04,000/-, detailed hereunder:-

Monthly income of the deceased	3200 US Dollar
Liability to pay income tax	30%
Deduction for personal expenses	½
Annual dependency in terms of Rupees	Rs.2,24,000/-
Multiplier	16
Loss of dependency	Rs. 35,84,000/-
Loss of consortium	Rs, 10,000/-

Expenses on last rites	Rs. 5,000/-
Loss of estate	Rs. 5000/-

Counsel for the appellants would urge that the Tribunal has assessed earning of the deceased @ 3200 US Dollar per month for a period of four months in a calendar year but the same should be six months in a year particularly in the circumstances that the deceased remained working as Merchant Navy Officer with British Marine PLC, Landon w.e.f. 12.2.2010 to 2.8.2010. Another submission made by counsel is that the claimants are entitle to addition in income for future prospects @ 40%. No deduction towards income tax is to be made in view of testimony of Pawan Kumar, Crew Manager, British Marine PLC, Delhi. Deduction for personal expenses is liable to be rectified in the light of judgment of Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298** affirmed by Constitution Bench of Hon'ble the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the contrary, has supported assessment of compensation with the submission that most of the documents in the shape of certificates etc., brought on record, are only marked and not exhibited. The total period of employment of deceased with British Marine PLC, Landon was for a period of five months and 20 days and the Tribunal has rightly allowed benefit of four months in a calendar year. As expenses for living and maintenance of the deceased while sailing would be more than the expenses ordinarily incurred by a person, the Tribunal has rightly deducted 50% for personal expenses.

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

Vandana, unfortunate widow of the deceased appeared in the witness box and reiterated that the deceased possessed so many certificates issued by various authorities and immediately before his death, he worked as third officer with British Marine PLC, Landon at a salary of 3200 US Dollar for the period from 12.2.2010 to 2.8.2010. Testimony of Vandana gets corroborated from the statement of Pawan Kumar, Crew Manager in British Marine PLC, Delhi. The deceased was a Merchant Navy Officer. Claimants have rightly pressed their claim for payment of compensation by taking into consideration salary of the deceased for a period of six months in a calendar year as Merchant Navy officers ordinarily sail for six months and remain off duty for half of the year. Taking into consideration the materials on record, loss of dependency is calculated by taking into account salary of the deceased @ 3200 US Dollar for a period of six months in a calendar year. In this manner, in Indian rupee @ 50/- per Dollar the annual salary comes to Rs. 9,60,000/- (3250x6x50). The Tribunal has rightly deducted 30% towards liability to pay income tax. Annual loss of dependency is calculated at Rs.6,72,000/- (9,60,000-2,88,000(30%)).

The deceased was 31 years old at the time of accident. Claimants shall be entitle to addition in income for future prospects @ 40%. The application for compensation has been filed by the widow and parents of the deceased. The Tribunal has rightly held that widow and mother of the deceased are entitle to compensation, to exclusion of father of the deceased. The Tribunal has allowed deduction for personal expenses to the tune of 50% by holding that personal expenses of the deceased would be more than 1/3rd during the period he remained sailing. No such fact has come on record as to how the deceased had been meeting his requirement of food etc. but definitely he would be staying in the ship while sailing. In absence of any evidence that personal expenses of the deceased would be more than 1/3rd, permissible to be deducted in the light of consistent findings recorded by the courts, in my considered opinion, deduction for personal expenses is to be taken as 1/3rd. In this manner loss of dependency is calculated at Rs. 6,72,000 x 16 = 1,07,52,000 + 43,00,800 (40%) = 1,50,52,800 – 50,17,600(1/3rd)= 1,0035,200/-

Under conventional heads, claimants shall be entitle to Rs. 70,000/-,. detailed hereunder:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

Total compensation is Rs.1,01,05,200/- and additional amount is Rs. 65,01,200/-(1,01,05,200/- 36,04,000/-), payable with interest @ 7.5 % per annum from the date of petition till realization to be shared equally by the widow and mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

28.9.2018
paramjit

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