IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3986 of 2013 (O&M)
Date of decision : July 03, 2018

Mukesh Devi and others .....Appellants

Versus

Deepak and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep Yadav, Advocate
for the appellants.

Mr. Sanjeev Kodan, Advocate
for respondent No. 1.

Ms. Manpreet Kaur, Advocate for
Mr. Chanderhas Yadav, Advocate
for respondent No. 2.

Mr. M.B. Jain, Advocate
for respondent No. 3.

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LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as the 'Tribunal') on account of death of Pawan Kumar vide award dated 23.04.2013.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, two minor children and parents of the deceased filed petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Pawan Kumar on 02.05.2011 in a motor vehicle accident caused due to rash and negligent driving of the offending scorpio vehicle bearing registration No. HR-66-3401 driven by respondent No.1. It was averred that the deceased Pawan Kumar was travelling towards Azad Nagar in the above said vehicle driven in a rash and negligent manner by respondent – Deepak. The vehicle toppled at about 5.30 p.m. Pawan Kumar suffered serious head injuries and succumbed to his injuries. FIR No. 93 dated 03.05.2011 (Ex.P2) under Sections 279 and 304-A IPC was registered at Police Station Beri, Tehsil and District Jhajjar in respect to the accident. The deceased, aged 35 years at the time of the accident was stated to be employed with the firm of PW4 – Sh. R.P. Yadav, Medical Consultant Alchem International Limited, Ballabgarh earning a sum of ₹14,500/- per month. Pawan Kumar was stated to be a sole bread earner of the family.

Learned Tribunal on consideration of facts and evidence on record awarded a sum of ₹11 lakhs. Income of the deceased was assessed as ₹8,000/- per month while observing that though the deceased was employed with the above mentioned firm at the time of the accident but the tenure of his service was only till 30.09.2011. Deduction of 1/4th was effected, keeping in view the number of dependants. Multiplier of 15 was applied and total dependency was calculated at ₹10,80,000/- Additionally, a sum of ₹10,000/- on account of loss of consortium and love and affection was awarded besides a sum of ₹10,000/- on account of expenses incurred on loss of estate and funeral expenses.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that in view of the definite and conclusive evidence led by the claimants in respect to the income of the deceased, the learned Tribunal has erred in holding the income of the deceased to be ₹8,000/- only. It is further submitted that in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil)**

1009, loss of future prospects at the rate of 40% and a sum of ₹40,000/- on account of loss of consortium and ₹15,000/- each on account of loss of estate and funeral expenses are required to be awarded. It is, however, not denied that deduction of 1/4th has been rightly effected and multiplier of 15 has also been applied correctly. It is, thus, prayed that compensation awarded to the claimants be enhanced.

Learned counsel for respondent No. 3 – insurance company, however, submits that tenure of employment of the deceased is proved to be from 01.10.2008 till 30.09.2011. The accident in question took place on 02.05.2011. It is not necessary that the deceased would have been employed thereafter especially keeping in view the fact that no document regarding the educational qualification of the deceased were proved on record. It is submitted that the compensation has been rightly assessed and the impugned award dated 23.04.2013 be upheld.

Heard learned counsel for the parties and have gone through the record with their able assistance.

There is no dispute that Pawan Kumar lost his life in a motor vehicle accident, which took place on 02.05.2011 on account of rash and negligent driving of the scorpio vehicle by respondent No. 1. The said finding of the learned Tribunal on this issue has attained finality. It is also not disputed that the deceased was 36 years old at the time of the accident as is reflected in his matriculation certificate (Ex.P4). Learned counsel for the respondent is unable to dispute the employment of the deceased with PW4 as a Field Supervisor with Alchem International Limited, Ballabgarh. PW4 – R.P. Yadav has proved on record the experience letter (Ex. PW4/A), attendance register for the years 2010-11, 2011-12 (Exs. PW4/B and

PW4/C) alongwith the salary registers for the concerned years and consultancy agreement (Ex. PW4/F). Income tax returns of the Firm (Ex. PW4/G) and (Ex. PW4/H) were also produced to reflect the last salary of the deceased to be ₹13,000/- per month. There is no doubt that the tenure of the service of the deceased was to come to an end in September, 2011 but there is nothing on record to suggest that the deceased could not be re-employed with the same Firm or elsewhere. There is no denial of the fact that he was an able bodied person, receiving the salary as above said.

Keeping in view the facts and circumstances, it is considered appropriate to assess the income of the deceased as ₹10,000/- per month instead of ₹8,000/-. In view of the guidelines in the judgment of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), compensation on account of loss of future prospects at the rate of 40% (₹4,000/-) is required to be awarded in view of the age of the deceased (36 years). Thus, income of the deceased is assessed as ₹14,000/- per month. Deduction of $1/4^{th}$ is to be applied as number of dependants is five (5), thereby rendering income of the deceased to be ₹10,500/-(14,000-3500). Multiplier of 15 is correctly applied. Annual dependancy of the claimants is, therefore, assessed as ₹18,90,000/- (₹10500x12x15). The claimants are also entitled to ₹40,000/- on account of loss of consortium, ₹15,000/- for funeral expenses and ₹15,000/- for loss of estate, as well as funeral expenses etc. Claimants are, thus, entitled to total compensation of ₹19,60,000/- detailed as under:-

Loss of dependency (10500x12x15)	₹18,90,000/-
Loss of consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	**₹19,60,000/-**

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(Lisa Gill)
Judge

July 03, 2018
rts

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