IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1766 of 2015 (O&M)
Date of decision: 27.03.2018

PARAMJIT SINGH & ORS ... Appellants

Versus

SUNNY BANSAL & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Manish Prabhaker, Advocate for the appellants.

Mr. Kulwinder Singh, Advocate for respondents No.1 and 2.

Mr. Pradeep Kumar, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

CM No.5221-CII of 2015

Heard.

Allowed as prayed for. Delay of 07 days in re-filing the appeal stands condoned.

CM No.5222-CII of 2015

Prayer in this application is for condonation of delay of 233 days in filing the appeal.

In view of the averments made in the application supported by affidavit of Paramjit Singh, one of the claimants coupled with that the provisions of Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, application is allowed and delay of 233 days in filing the appeal is condoned subject to the condition that the claimants shall forgo interest for the period of delay in case compensation is enhanced.

Main Case

The claimants are in appeal seeking enhancement of compensation on account of death of Sukhraj Singh aged about 23 years, in a motor vehicular accident that took place on 08.02.2012.

The Tribunal has awarded compensation of Rs.3,65,600/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.3600/-
2. Multiplier	12
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.3,45,600/-
5. Expenses on funeral	Rs.20,000/-

Counsel for the appellants would argue that income of the deceased assessed by the Tribunal is on lower side and needs enhancement. Claimants examined Col. Avtar Singh PW3 and he proved certificate Ex.P5 regarding salary of Rs.8500/- per month being paid to Sukhraj Singh as driver of JCB machine. It is further argued that claimants are entitled to increase in income for future prospects @ 40% and appropriate multiplier of 18 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, on the other hand, would urge that admissible deduction for personal expenses should be 50% as claimants No.3 to 5 cannot be said to be dependent upon income of the deceased particularly during lifetime of their father Paramjit Singh. It is further argued that there is nothing on record suggestive of the fact that Paramjit Singh is incapacitated to earn livelihood for his family, therefore, claim by appellants No.3 to 5 cannot be allowed.

I have heard counsel for the parties, perused the paper book particularly the award.

Counsel for the appellants has fairly conceded that claimants did not produce licence possessed by Sukhraj Singh to establish their plea that he was driver of JCB machine. Col. Avtar Singh PW3 did not produce any documentary evidence with regard to employment and income of Sukhraj Singh except the certificate Ex.P5. In the given scenario, Tribunal has rightly discarded testimony of Col. Avtar Singh for assessing income of the deceased. In view of the minimum wage of an unskilled worker at the relevant time fixed by Government of Punjab State, income of the deceased is assessed at Rs.4000/- per month. Claimants shall be entitled to benefit of future prospects @ 40%. As the deceased was 23 years old, admissible multiplier would be 18 in the light of judgments of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**, **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315** and **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

The Tribunal has applied deduction for personal expenses to the extent of 1/3rd. The application for compensation was filed by the parents and three siblings of the deceased. As has been rightly argued by counsel for the insurance company that there is nothing on record suggestive of the fact that father of the deceased had been suffering from any disability impairing his capacity to work and earn livelihood for his family. Under the circumstances, admissible deduction for personal expenses would be 50% when the case is examined in the light of judgment in **Sarla Verma's case** (supra). In this manner, loss of dependency comes to Rs.6,04,800/- (Rs.4000 x 12 x 18) + (40% 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.6,34,800/- and the additional amount is Rs.2,69,200/- (6,34,800 - 3,65,600), payable with interest @ 7.5% per annum from the date of petition till realization except for the period of 233 days delay in filing the appeal, to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

27.03.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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