IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2830 of 2015 (O&M)
Date of decision: 30.07.2018.

Rekha and another

...Appellants

Versus

Davinder Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjay Jain, Advocate for the appellants.

Mr. Rajbir Singh, Advocate for respondent No.3.

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LISA GILL, J.

The appellants/claimants have filed this appeal for enhancement of the compensation awarded to them by learned Motor Accident Claims Tribunal, Panchkula (`Tribunal' for short) on account of death of Nancy due to the injuries received in a motor vehicle accident. Claimants are the parents of the deceased.

Brief facts necessary for adjudication of the case are that the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of their daughter Nancy in a motor vehicle accident which took place on 25.01.2013 due to the rash and negligent driving of the offending vehicle by its driver/respondent No.1. Respondent No.2 is the registered owner of the offending vehicle. Learned Tribunal concluded that Nancy had lost her life due to the rash and negligent driving of the vehicle in question by respondent No.1. FIR No.24 dated 25.01.2013 (Ex.P3) was registered in Police Station Pinjore. Said

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finding of the learned Tribunal on this issue has attained finality. It was averred that the deceased Nancy was 23 years old at the time of her death, running a beauty parlour in a rented shop and earning Rs.11000/- per month. Diploma of the deceased was placed on record as Ex.P1. She was unmarried at that time. The claimants were dependent upon the income of the deceased.

Learned Tribunal on the basis of the diploma/certificate (Ex.P1) assessed the income of the deceased as Rs.5000/-. 30% was added in the monthly income of the deceased towards future prospects. Her monthly income was assessed as Rs.6500/-. Deduction of 50% was applied as the deceased was unmarried taking the income of the deceased for the purpose of dependency of claimant No.1 to Rs.3250/-. Keeping in view the age of the deceased, multiplier of 18 was applied and dependency assessed as Rs.7,02,000/-. Claimant No.2 was not held entitled to any compensation as he was getting monthly pension. A sum of Rs.50,000/- was awarded under conventional heads i.e. loss of love and affection, funeral and last rites expenses etc. Thus, claimant No.1 was held entitled to total compensation of Rs.7,52,000/-. Respondents No.1 and 2 being driver and owner of the offending vehicle were held liable jointly and severally.

Aggrieved therefrom, this appeal has been filed.

Learned counsel for the appellants seeks enhancement on the ground that income of the deceased has wrongly been assessed at Rs.5000/- per month as a casual workman whereas deceased was earning Rs.11,000/- per month as she was running a beauty parlour in a rented shop. She was having diploma of beautician (Ex.P1). This fact has been duly corroborated by the statement of PW2 Mrs. Khushboo, the proprietor of M/s Beauty Point

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Parlour and Jasbir Kaur @ Bhago Devi and PW3, the landlord of the shop where deceased was running a beauty parlour. Learned Tribunal has afforded 30% future increase of income but it should have been 40% as per the settled law. No serious claim has been raised on behalf of claimant/appellant No.2. It is, thus, prayed that the compensation be enhanced.

Learned counsel for the Insurance Company while refuting the above facts, submits that learned Tribunal has rightly assessed the income of the deceased as Rs.5000/- per month because there is no documentary evidence on record to show the employment and income earned by the deceased.

I have heard learned counsel for the parties and have gone through the evidence and record with their able assistance.

There is no dispute that deceased lost her life in a motor vehicle accident due to the rash and negligent driving of the offending 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 unmarried and 23 years old at the time of her death. There is no doubt that except the statements of Mrs. Khushboo, PW2 and Jasbir Kaur alias Bhago Devi, PW3, there is nothing on record to prove that the deceased was indeed running a beauty parlour. No document to this effect has been produced on record. However, even if the income of the deceased is to be assessed taking her to be a casual worker, the same should be at least Rs.5730/- i.e. the minimum wage of an unskilled labourer in the State of Haryana at the time of accident.

Learned Tribunal has added 30% towards future prospects but in terms of the judgment of the Hon'ble Supreme Court in **National Insurance**

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<u>Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1099,</u> loss of future prospects at the rate of 40% should be afforded. Thus, compensation on account of loss of future prospects at the rate of 40% (Rs.2092/-) is afforded in view of the age of the deceased (23 years), which takes the income of the deceased to Rs.8022/-. Deduction of 50% has rightly been effected on account of personal expenses as the deceased was unmarried, thereby rendering income of the deceased to be Rs.4011/- (8022-4011). Multiplier of 18 has rightly been applied keeping in view the age of the deceased. Therefore, annual dependency of claimant No.1 is, therefore, assessed as Rs.8,66,376/- (Rs.4011x18x12). The claimant No.1 is however entitled to Rs.30,000/- under conventional heads i.e. Rs.15000/- each for loss of estate and funeral expenses.

In view of the above, compensation to be afforded to appellant/claimant No.1 is reworked as under: -

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	5730 p.m. i.e.Rs.68,760/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	68,760 **+** (68,760 **x** 40%) = 96,264/-
3.	Income after deduction of 50% on account of personal expenses	96264 **–** 48132/- = 48132
4.	Total dependency after applying a multiplier of 18	(48132 **x** 18) = 8,66,376/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
	Grand Total	Rs.8,96,376/-

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

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

(LISA GILL)
JUDGE

July 30, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No

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