IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO No.466 of 2014 (O&M)
Date of Decision:30.01.2018

Talwinder Kaur and others .....Appellants

Vs.

Pardeep Kumar and another .....Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Kushagra Mahajan, Advocate for the appellants.

Ms. Gulnoor Ghuman, AAG, Punjab.

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RAMENDRA JAIN, J. (Oral)

Through the instant appeal, the appellants- claimant have sought enhancement of compensation against the death of Kashmir Singh, a government employee by modification of the impugned award dated 11.09.2013 of the Motor Accident Claims Tribunal, Amritsar (for short, `the Tribunal').

Undisputed facts are that Kashmir Singh, Constable in Punjab Police aged around 38 years died in a motor vehicle accident occurred on 20.04.2012.

His widow and two minor children (appellants- claimant) filed a claim petition under Section 166 of the Motor Vehicle Act (for short, `the Act') before the Tribunal, Amritsar.

After holding trial, the learned Tribunal granted compensation to the appellants- claimant to the tune of ₹21,68,120/- along with interest @6% per annum from the date of filing of the petition till realisation vide impugned award dated 11.09.2013.

Learned counsel for the appellants- claimant submitted that the trial Court has wrongly deducted the pensionary benefits of the deceased- Kashmir Singh while calculating the compensation amount. The learned Tribunal has not added 50% of the income of the deceased towards future prospects and granted ₹50,000/- less compensation towards loss of estate, consortium and funeral expenses. In support of his contention, he placed reliance upon 2017(4) R.C.R (Civil) 1009 – **National Insurance Co. Ltd. v. Pranay Sethi and others** and (2013) 7 Supreme Court Cases 476 – **Vimal Kanwar and others v. Kishore Dan and others**.

On the other hand, learned State Counsel vehemently opposed the arguments raised by learned counsel for the appellants.

Having given considerable thoughts to the submissions made by both the sides, this Court finds that the impugned award requires modification in view of the judgment referred above.

According to **Vimal Kanwar's case (supra)**, provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposit etc are all a "pecuniary advantage" receivable by the heirs on account of one's death, but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction.

Therefore, it can safely be held that the learned Tribunal has wrongly deducted the family pension receivable by the claimants while calculating the just compensation.

According to salary certificate Ex.P5, deceased- Kashmir Singh was drawing salary at ₹32,213/-. Cut off one third from the above monthly salary of the deceased has rightly been applied by the Tribunal towards personal expenses of deceased. After applying the said cut, the net monthly income of the deceased comes to ₹21,475/- and annually ₹2,57,700/-.

Age of the deceased- Kashmir Singh at the time of his death was 38 years. According to **Smt. Sarla Verma and others v. Delhi Transport Corporation and others,** 2009(3) R.C.R. (Civil) 77, multiplier of 15 has to be applied. On applying the same and adding 50% to it towards future prospects, the dependency of the appellants-claimant upon the deceased comes to ₹2,57,700/- X 15 = ₹38,65,500/- + 50% = ₹57,98,250/- for which the claimants are held entitled.

That apart, the claimants are also entitled for ₹50,000/- more towards loss of estate, consortium and funeral expenses over and above ₹20,000/- granted by the trial Court. Therefore, the amount comes to ₹58,18,250/- = (₹57,98,250 + ₹20,000).

The Tribunal has already awarded a compensation of ₹21,68,120/- to the claimants.

Therefore, after deducting the said amount, the compensation now remains unpaid to the claimants comes to ₹36,50,130/- for which the appellants are held entitled along with interest @ 6% per annum from the date of claim petition till its realisation.

The appeal is disposed of accordingly.

January 30, 2018 **(RAMENDRA JAIN)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No