IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3500-2015 (O&M)
Date of decision: 07.02.2018

Smt. Manju Bala and another ... Appellants

Versus

Kailash Chand and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. S.K. Verma, Advocate
for the appellants.

Mr. R.K. Bashamboo, Advocate
for the insurance company.

Ms. Manpreet Kaur, Advocate for
Mr. Chanderhas Yadav, Advocate
for respondent No.4.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Baldev Yadav in a motor vehicular accident that took place on 19.05.2013.

The Tribunal has awarded compensation to the tune of Rs.28,38,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.24,000/-
2. Multiplier	14
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.26,88,000/-
5. Expenses on transportation and last rites	Rs.20,000/-

6. Loss of consortium	Rs.1,00,000/-
7. Loss of love and affection	Rs.30,000/-

Counsel for the appellants has submitted that as per the salary certificate Ex.PW1/A, gross salary of the deceased was Rs.26,481/- out of which an amount of Rs.1879/- was deducted towards GPF and Rs.30 under CGEGIS, therefore, the entire salary is required to be taken into consideration for computing loss of dependency. As the deceased was 28 years old, admissible multiplier in the light of judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** is 17. Claimants are entitled to benefit of increase in income for future prospects @ 50% as the deceased was working as Constable in Central Reserve Police Force (CRPF).

Counsel representing the insurance company has submitted that the Tribunal has not deducted income tax and the same may be allowed. Compensation awarded under conventional heads needs to be restricted to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

The Tribunal in para 37 of the award, has noticed salary of the deceased to be Rs.26,481/- as per salary certificate Ex.PW1/A, net pay Rs.24,222/- after deduction but proceeded to assess his income at Rs.24,000/- per month without assigning any reason as to why the gross salary is not to be taken into consideration or the deductions are liable to be excluded from his salary for computing loss of dependency. On the contrary, perusal of document Ex.PW1/A substantiates contention of the appellants that gross pay of the deceased is liable to be taken into account for computing loss of dependency. Not only this, in para 38, the Tribunal has held that multiplier is adopted as per age of the deceased and in para 36, age of the deceased has been assessed to be 28 years. It is not understandable, despite recording a finding that age of the deceased is 28 years, Tribunal has applied multiplier of 14 in place of appropriate multiplier of 17 in the light of judgment of Hon'ble the Supreme Court in **Sarla Verma's case** (supra).

The Tribunal has not allowed benefit of addition in income for future prospects by holding that the matter with regard to future prospects has been referred to a larger bench in **National Insurance Company Ltd. Vs. Pushpa and others, SLP(C) No.16735 of 2014 decided on 02.07.2014**. In the said case, matter with regard to grant of future prospects was referred to a larger bench in case the deceased happens to be self employed or working on fixed wages in view of contradiction in the judgments of Hon'ble the Supreme Court **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170** and **Reshma Kumari and others Vs. Madan Mohan and another, 2013(2) RCR (Civil) 660**. The Tribunal again did not apply its mind that the matter with regard to grant of future prospects in case the deceased happens to be a regular government employee was not the subject matter of reference in **Pushpa's case** (supra).

All these facts show the officer presiding over the Tribunal in poor light as he has shirked from his responsibility to assess just compensation and has overlooked landmark judgment of Hon'ble the Supreme Court in **Sarla Verma's case** (supra) for unknown reasons.

Perusal of the document Ex.PW1/A substantiates contention of the appellants that gross pay of the deceased is to be taken into account for computing loss of dependency. Annual income of the deceased @Rs.26,481/- per month comes to Rs.3,17,772/-. After deducting income tax, income available for computing loss of dependency comes to Rs.3,05,995/-. The deduction for personal expenses allowed by the Tribunal is affirmed. As the deceased was 28 years old, admissible multiplier is 17. Claimants are entitled to increase in income for future prospects @ 50%. In this manner, loss of dependency comes to Rs.52,01,915/- (3,05,995 x 17) + (50% future prospects) – (1/3rd deduction for personal expenses).

Compensation under conventional heads awarded by the Tribunal is modified by awarding a sum of Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **Pranay Sethi's case** (supra), detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.52,71,915/- and the additional amount is Rs.24,33,915/- (52,71,915 – 28,38,000), payable with interest

@7.5% per annum from the date of petition till realization to the appellants in the proportion 40:60. The share of minor child shall be deposited in FDR payable on her attaining age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

07.02.2018
ashok

(REKHA MITTAL)
JUDGE

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