IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3548 of 2015 (O&M)
Date of decision:23.08.2018.

Smt. Sumitra and another

...Appellants

Versus

Arif and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Shiv Kumar, Advocate for the appellants.

Mr. Subhash Goyal, Advocate for respondent No.3.

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LISA GILL, J.

CM No.10532-CII of 2015

For the reasons mentioned in the application and arguments addressed, the delay of 80 days in filing the appeal is condoned.

Application is allowed.

FAO No.3548 of 2015

This appeal has been filed by the claimants seeking enhancement of the compensation awarded to them by Motor Accident Claims Tribunal, Faridabad (`Tribunal' for short) vide award dated 04.09.2014 on account of death of Ved Parkash in a motor vehicle accident on 28.10.2012.

The claimants, who are the widow and daughter of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of the death of Ved Parkash in a motor vehicle accident which took place on 28.10.2012. FIR No.396 dated

28.10.2012 was registered against respondent No.1 under Section 279, 304-A and 338 IPC at Police Station Suraj Kund, District Faridabad. The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of offending vehicle by respondent No.1. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality. It was asserted that the deceased was a trained driver. He was 53 years at the time of his death. He was running a transport business and was having a goods carrier vehicle, earning Rs.20,000/- per month. Claimants were fully dependent upon the deceased.

Learned Tribunal determined the age of the deceased to be 54 years at the time of his death. Learned Tribunal has further held that there was no documentary proof regarding his income. However from the copy of his driving licence Ex.P4 and copy of RC Ex.R5, it was proved that the deceased was a driver/transporter by profession, therefore, treating him to be a driver, his income was assessed as Rs.10,000/- per month. Deduction of 1/3rd was effected. After applying a multiplier of 11, total dependency was assessed at Rs.8,80,000/-. Another sum of Rs.25,000/- was awarded as consortium. Thus, claimants were held entitled for total compensation of Rs.09,05,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till realisation. Respondent No.3-Insurance Company was held liable to pay the amount of compensation to the claimants.

It was further held by learned Tribunal that out of compensation amount of Rs.09,05,000/-, claimant No.1 (widow of the deceased) was entitled to Rs.5,00,000/- and claimant No.2 (daughter of the deceased) was held entitled to Rs.04,05,000/-. It was also held that out of their respective share, 50% was directed to be paid in cash whereas 50% was to be deposited in some Nationalized Bank.

Learned counsel for the appellants argues that compensation awarded to the appellants needs to be enhanced. Income of the deceased has wrongly been assessed at Rs.10,000/- as he was engaged in the business of transport and was earning Rs.20,000/- per month. No increase on account of future prospects has been afforded. Deduction of 1/3rd has wrongly been effected. It is further argued that compensation has not been awarded on account of funeral expenses and loss of estate. It is thus prayed that this appeal be allowed and compensation awarded be enhanced.

Learned counsel for the Insurance Company has refuted the above said arguments while submitting that the impugned award has been correctly passed. Income of the deceased has rightly been assessed because there was no documentary proof regarding the income of the deceased. Deduction of 1/3rd was rightly effected. Thus, no ground is made out for any enhancement of the compensation awarded.

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

Age of the deceased i.e. 54 years at the time of the accident is not in dispute. Income has been correctly assessed at Rs.10,000/- per month. There is no evidence on record to justify fixation of the deceased's income any higher. In view of the guidelines laid down by the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, 10% increase in income has to be afforded on account of future prospects. Claimants are entitled to Rs.15,000/-

each for loss of estate and funeral expenses besides Rs.40,000/- instead of Rs.25,000/- to the claimant widow for loss of consortium.

Deduction of 1/3rd on account of personal expenses is justified. Multiplier of 11 has been rightly applied. Appellants-claimants are, thus, entitled to compensation, which is re-worked as under:-

Sr.No.	***Heads of Claim***	
1.	Income	10,000 p.m. i.e., 1,20,000/- per annum
2.	Total income after addition at the rate of 10% on account of future prospects	1,20,000+(1,20,000 x 10%) = 1,32,000/-
3.	Income after deduction of 1/3rd on account of personal expenses	1,32,000–44000 (1,32,000/1/3rd) = 88,000/-
4.	Total dependency after applying a multiplier of 11	(88,000 **x**11) = 09,68,000/-
5.	Loss of estate	15,000/-
6.	Loss of consortium to wife	40,000/-
7.	Loss of funeral	15,000/-
Grand Total		10,38,000

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 award dated 04.09.2014, present appeal is disposed of.

(LISA GILL)
JUDGE

August 23, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No