IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-5193-2014(O&M)
Date of Decision: 31.07.2018

Ms. Satinder Kaur --Appellant

Versus

Shri Gurnam Singh & another --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. D.P. Sharma, Advocate for the appellant.

Mr. Vinod Gupta, Advocate for respondent no.2-Insurance Co.

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TEJINDER SINGH DHINDSA.J (Oral)

This is claimant's appeal seeking enhancement of compensation.

Brief facts that may be noticed are that on 18.2.2013 claimant/appellant herein Satinder Kaur along with her family members namely Jasbir Singh (husband), Harmeet Singh (son), Mankinder Kaur (daughter) and Gurdeep Singh (son) were returning from village of sister of the claimant and proceeding to their residence in Manimajra in a Maruti car bearing registration no. CH-03-A-8833 being driven by Jasbir Singh (husband). At about 6 A.M when the family reached near Civil Hospital, Kurali, a truck bearing registration no. PB-12-N-0181 (to be referred to as the offending vehicle) came from the opposite side being driven in a rash and negligent manner and collided with the car. As a result of the accident, claimant's husband Jasbir Singh, son Harmeet Singh and daughter Mankinder Kaur died on the spot. Claimant herself and another son Gurdeep Singh suffered serious injuries and were referred to P.G.I., Chandigarh. Gurdeep Singh also succumbed to the injuries suffered during the course of treatment at P.G.I, Chandigarh on 22.2.2013.

Claim Petition No.1150 of 2013 under Section 166 of the Motor Vehicle Act was filed in the M.A.C.T, Chandigarh by the claimant/appellant seeking compensation of Rs.30 lacs along with interest @ 12% per annum on account of death of her husband Jasbir Singh in the accident.

The claim petition having been contested, the following issues were framed by the Tribunal:-

> *"1. Whether deceased died on account of injuries sustained by him in a road accident, which took place on 18.02.2013 due to rash and negligent driving of truck No.PB-12-N-0181 by its driver-respondent no.1?OPP*
> *2. Whether claimant is entitled to any amount as compensation, if so, what amount and from whom?OPP*
> *3. Whether respondent no.1 was not holding any valid driving licence at the time of accident, if so, its effect?OPR-3*
> *4. Relief."*

Since the only issue involved in the instant appeal is with regard to quantum of compensation, I would be adverting to the findings recorded by the Tribunal as regards Issue No.2.

Perusal of the award dated 31.1.2014 passed by the Tribunal would reveal that income of Jasbir Singh (since deceased) has been assessed as Rs.13,221/- per month. Age of the deceased has been taken as 46 years as reflected in the Post Mortem Report Ex .PC. An increase in income towards future prospects has been awarded @ 30%. A deduction of 50% has been made towards personal and living expenses and a multiplier of 12 has been applied to the multiplicant. A sum of Rs.1 lac has been awarded towards loss of consortium and Rs.25,000/- on account of transportation, funeral expenses and last rites etc. The total amount of compensation computed is Rs.13,62,032/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

The liability to pay the compensation has been held to be joint and several between the owner/driver and the Insurance Company.

I have heard counsel for the parties at length.

The monthly income of the deceased has been assessed as Rs.13,221/- per month on the basis of income tax returns Ex. C2 and C3 for the Assessment Years 2010-2011 and 2011-2012 and wherein the total income of the deceased had been reflected as Rs.1,53,700/- per annum and Rs.1,58,650/- per annum respectively. As such, the assessment of the monthly income of the deceased made by the Tribunal does not call for any interference. The Tribunal has granted an increase in income towards future prospects at 30%. By applying the dictum laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) R.C.R (Civil), 1009*** and keeping in view the uncontroverted factual premise that the deceased was self employed and was in the age bracket of 40-50 years, the increase in income towards future prospects ought to have been granted at 25% instead of 30%. It is so directed.

The Tribunal has clearly erred in making 50% deduction from the monthly income towards personal and living expenses of the deceased. Concededly the number of dependents/family members in the facts of the present case were up to four and by applying the parameters laid down in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) R.C.R (Civil), 77*** $1/3^{rd}$ cut towards personal and living expenses ought to have been made. It is so directed.

The Tribunal has applied the multiplier of 12 to the multiplicand. Keeping in view the age of the deceased as 46 years and by applying the parameters in ***Smt. Sarla Verma's*** case (supra), multiplier of 13 ought to have been applied. It is so directed.

The Tribunal has awarded a sum of Rs.1,25,000/- towards conventional heads i.e. loss of consortium (Rs.1 lac) and Rs.25,000/- towards funeral expenses. By applying the dictum laid down in ***Pranay Sethi's*** case (supra) the amount awarded under the conventional heads is scaled down to Rs.70,000/- (Rs.30,000/- towards loss of consortium, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses).

In view of the above, the compensation payable to the claimant/appellant herein is reassessed and calculated as follows:-

Sr. No.	Head	Calculation
1.	Monthly Income	13,221/-
2.	25% increase in income towards future prospects	13,221+25%=16,526/-/-
3.	1/3rd deductions towards personal expenses of the deceased.	16526 ÷ 3 = 5,508/- 16,526-5,508 = 11,018/-
4.	Compensation after applying multiplier of 13	11,018x12 = 1,32,216/- 1,32,216x13 = 17,18,808/-
5.	Conventional heads (loss of consortium, loss of estate, funeral expenses etc.)	70,000/-
6.	Total	17,18,808+70,000=Rs.17,88,808/-

The afore-computed enhanced compensation be released in favour of the claimant/appellant along with interest @ 6% per annum from the date of filing of the claim petition till actual realization.

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

31.07.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No