IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5271-2014 (O&M)
Date of decision: 29.01.2018

REKHA DEVI AND ORS ...Appellants

Versus

SANJAY SINGH @ BUNTY AND ORS ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Anshul Khurana, Advocate for
Mr. Sanjay Vashisth, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.3.

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<u>REKHA MITTAL, J. (Oral)</u>

The claimants are in appeal seeking enhancement of compensation on account of death of Suresh Kumar in a motor vehicular accident that took place on 07.12.2010.

The Tribunal has awarded compensation to the tune of Rs.13,95,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.10,000/-
2. Multiplier	17
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.13,60,000/-
5. Expenses on funeral	Rs.5000/-
6. Loss of estate	Rs.5000/-
7. Loss of love and affection and consortium	Rs.25,000/-

Counsel for the appellants has submitted that the deceased was an Advocate by profession, earning Rs.25,000/30,000/- per month and accordingly his income is liable to be enhanced. The two Income Tax Returns filed by the deceased are Exs.P1 and P2. It is argued that income of the deceased is liable to be assessed on the basis of gross total income shown in Exs.P1 and P2. Claimants are entitled to increase in income for future prospects @ 40%. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported findings of the Tribunal assessing income of the deceased at Rs.10,000/- per month. It is argued that the documents Exs.P1 and P2, tendered into evidence by counsel for the claimants, have rightly been ignored by the Tribunal. The deceased was enrolled as an Advocate by the Bar Council of Punjab and Haryana on 17.05.2010 and he died in December, 2010. In absence of clear evidence qua his income, plea of the claimants that he was earning Rs.25,000/30,000/- per month as a professional is not acceptable.

One of the claimants, Rekha Devi widow of the deceased appeared in the witness box and tendered into evidence her affidavit PW3/A. Nothing has been mentioned in the affidavit with regard to avocation and income of the deceased. In her cross-examination, she has deposed that her husband was practicing for the last one or two years and used to earn Rs.25,000/30,000/- per month. As the deceased was enrolled as an Advocate on 17.05.2010, he could, at best, be in practice since the day of his enrollment. The two Income Tax Returns marked Exs.P1 and P2 in the statement of counsel for the claimants before the Tribunal, do not contain details of the gross total income in order to prove that said income was earned because of personal efforts of the deceased. Even the claimants did not examine any witness from the Income Tax Department to prove, if any documents were appended along with the documents Exs.P1 and P2. Under the circumstances, the Tribunal has rightly assessed income of the deceased at Rs.10,000/- per month. However, the claimants shall be entitled to increase in income for future prospects @ 40%. The multiplier and deduction allowed by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.19,04,000/- (10,000 x 12 x 17) + (40% future prospects) – (1/3rd deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**, detailed hereunder:-

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

The total compensation comes to Rs.19,74,000/- and the additional amount is Rs.5,79,000/- (19,74,000 – 13,95,000), payable with interest @ 7.5% per annum from the date of petition till realization to the widow and minor child of the deceased in equal proportion. The amount shall be deposited in FDRs for a period of three years.

The appeal is partly allowed in the aforesaid terms.

29.01.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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