In the High Court of Punjab and Haryana at Chandigarh

FAO No. 596 of 2013(O&M)
Date of Decision:25.1.2018

Vinod Kumar

---Appellant

vs.

Sanjay Kumar @ Munim and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Varun Gupta, Advocate
for the appellant

Ms. Bhavna Grewal, Advocate
for respondent Nos. 1 and 2

Respondent No. 3 already ex parte

Ms. Vandana Malhotra, Advocate
for respondent No. 4

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<u>Rekha Mittal, J.</u>

The claimant is in appeal seeking enhancement of compensation on account of death of Krishan Kumar in a motor vehicular accident that took place on 7.6.2009.

The Motor Accidents Claims Tribunal, Narnaul (in short "the Tribunal") has awarded compensation to the tune of Rs. 50,000/- in view of observations recorded in para 27 of the award.

Counsel for the appellant has submitted that the deceased was younger brother of the claimant and he is the only legal representative of deceased Krishan Kumar and entitled to get compensation. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court ***Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another AIR 1987 SC 1690***. Further reference has been made to judgments of this court ***Ikattar Singh and another vs. Dalvir Singh and others 2017(4) RCR (Civil) 1061, Charanjit Kaur vs. Suresh Kumar and others 2014 (3) RCR (Civil) 908*** and ***Apurva Kalia vs. Harvinder Singh and others 2016 (2) Law Herald 1723.*** It is argued with vehemence that appropriate compensation may be allowed by assessing income of the deceased and loss of dependency etc. In the alternative, it is argued that even if the claimant is not allowed compensation for loss of dependency, he is entitled to adequate compensation qua loss to estate.

Counsel representing the insurance company has supported the award with the submission that as the claimant is working as Peon in a government school, he was not dependent upon earnings of the deceased, thus, not entitled to compensation for loss of dependency. It is further argued that the Tribunal has rightly allowed Rs. 50,000/- under 'No Fault Liability'.

Indisputably, claimant is elder brother of deceased Krishan Kumar and working as Peon in a government school. Hon'ble the Supreme Court in ***Montford Brothers of St. Gabriel and another vs. United India Insurance and another (2014) 3 Supreme Court Cases 394*** has held that in case of death of a person in a motor vehicular accident, right is available to a legal representative of the deceased or agent of the legal representative to lodge a claim for compensation under the provisions of the Motor Vehicles Act, 1988 (in short “the Act”). In ***Gujrat State Road Transport***

Corporation, Ahmedabad's case (supra), it has been held that brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased. It was further held that every legal representative who suffers on account of death of a person due to motor vehicle accident should have a remedy for realization of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have remedy. It is for the motor vehicles accidents tribunal to determine the compensation which appears to be just and provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid.

Before adverting to the rival submissions made by counsel for the parties, it is appropriate to mention that there are various facets which require to be taken into consideration for determining just and reasonable compensation in the peculiar facts and circumstances obtaining in a case. The compensation is allowed by the Tribunal under conventional heads as well viz expenses on funeral and last rites and loss of estate etc. In cases, where compensation has been awarded to dependents of the deceased, element of loss to estate is less significant. However, if compensation is not allowed on the basis of dependency, loss of estate assumes significance. In this view of the matter, in my considered opinion, compensation under the circumstances of the present case is to be allowed primarily on account of loss of estate.

There is no clear evidence on record with regard to income of the deceased. Taking into consideration the minimum wage of an unskilled labour available at the relevant time, income of the deceased is assessed @ Rs. 3840/- per month. There will be addition in income for future prospects @ 40%. As the deceased was 23 years old, appropriate multiplier is 18. The deceased was unmarried and claimant is his elder brother, deduction admissible for personal expenses would be 50%. The compensation comes to Rs. 3840 x 12 x 18 = 8,29,440 + 3,31,776 (40%) = 11,61,216 – 5,80,608 (½)= Rs.5,80,608/-.

As the claimant shall be entitled to loss of estate only, he is allowed 40% of the amount i.e. **Rs.2,32,243/-** (5,80,608 x40/100). In addition, he is allowed an amount of Rs. 15,000/- for expenses on funeral and last rites. The total compensation comes to Rs. 2,47,243/-, payable with interest at the rate of 6% per annum from the date of petition till realization. The amount awarded by the Tribunal is liable to adjustment.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

25.1.2018
paramjit

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