

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-5536-2014 (O&M)
Date of Decision: 26.07.2018

Sumanpreet Kaur & others

--Appellants

Versus

Yadwinder singh & others

--Respondents

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

Present:- Ms. Ekta Thakur, Advocate for the appellants.

Mr. Jasmeet Ghumman, Advocate for respondents no.1 & 2.

Ms. Vandana Malhotra, Advocate for respondent no.3.

TEJINDER SINGH DHINDSA.J (Oral)

This is claimants' appeal seeking enhancement of compensation.

Brief facts that may be noticed are that Kulwant Kaur died in a motor vehicle accident on 20.12.2011 while she was traveling in a car bearing registration no. PB-65-P-3459.

The claim petition under Section 166 of the Motor Vehicle Act, 1988 was filed before the Motor Accident Claims Tribunal (hereinafter to be referred as the Tribunal), S.A.S. Nagar, Mohali by the claimants, who happen to be the two daughters, son and husband of the deceased. Compensation to the tune of Rs.20 lacs was claimed.

Upon the pleadings of the parties, the following issues were framed by the Tribunal:-

- “1. Whether respondent no.1 was driving car bearing registration no. PB-23-E-0270 in rash and negligent manner and struck against the car bearing no. PB-65-P-3459 due to which Kulwant Kaur died?OPD*
- 2. Whether the claimants are entitled to compensation, if so, at what rate?OPD*
- 3. Whether driver of the car was not holding valid and effective driving license?OPR*

4. *Whether the offending car was not insured with the respondent no.3?OPR*

5. *Relief.”*

As regards Issue No.1 a finding was returned in favour of the claimants and it was held that Kulwant Kaur died on account of rash and negligent driving of car bearing registration no. PB-23-E-0270 by respondent no.1 Yadvendra Pal Singh.

In so far as quantum of compensation is concerned, the age of the deceased Kulwant Kaur was taken as 50 years as recorded in the Post Mortem Report Ex. PW/2. Even though, claimants had asserted that Kulwant Kaur (since deceased) was running the business of dairy farming and had an income of Rs.8,000/- per month but the Tribunal on account of lack of cogent and convincing evidence in such regard has taken the monthly income of the deceased as Rs.3,000/- per month being guided by the ratio in judgement of Apex Court in ***Lata Wadhwa and others Vs. State of Bihar and others, (2001) 8 SCC 197***. Taking the age of deceased as 50 years the multiplier of 13 has been applied and the compensation has been assessed as Rs.4,68,000/-. An amount of Rs.25,000/- towards funeral expenses and Rs.5,000/- for loss of estate were also granted. The total compensation awarded by the Tribunal is Rs.4,98,000/- along with interest @ 6% per annum, if, the payment is released within three months and 9% interest, if, compensation amount is paid beyond such period.

Since the only issue arising in the instant appeal is with regard to quantum of compensation, I have heard Ms. Ekta Thakur, Advocate representing the appellants and Ms. Vandana Malhotra, Advocate representing the contesting respondent no.3-Insurance Company.

In the considered view of this Court the compensation awarded by the Tribunal to the appellants is on the lower side.

Even if no evidence had been adduced on record to prove that deceased Kulwant Kaur was doing any dairy farm business, still, her income had to be assessed in the capacity of a house wife. The Apex Court in case of ***Jitendra Khimshankar Trivedi and others Vs. Kasan Daud Kumbhar and others, (2015) 4 SCC, 237*** while dealing with the aspect of assessing income of a house wife observed as under:-

“It is hard to monetize the domestic work done by mother. The service of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by wife to the house as invaluable and that it cannot be computed in terms of money.”

The Tribunal has assessed the income of deceased Kulwant Kaur at Rs.3,000/- per month on the basis of ***Lata Wadhwa's*** case (supra). In that case the accident had taken place in the year 1981. The accident in the present case has taken place in the year 2011 i.e. after a period of about 30 years. Keeping in view the time period lapse of 30 years between the accident in the case of ***Lata Wadhwa*** and the accident in the present case and coupled with the settled position that contribution of a house wife cannot be estimated and it being not possible to calculate her contribution to the family in monetary terms, it would be a fit case to take the monthly income of the deceased as Rs.6,000/- per month.

The Tribunal has applied the multiplier of 13 keeping in view the age of deceased and which is as per parameters laid down by the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) R.C.R (Civil), 77 .***

Counsel for the contesting respondent-Insurance Company concedes that as regards compensation on conventional heads i.e. funeral expenses, loss of consortium etc. the amount requires to be enhanced to Rs.70,000/- from Rs.30,000/- as awarded by the Tribunal in view of the judgement in *National Insurance Company Limited Vs. Pranay Sethi and others, 2017(4) R.C.R (Civil), 1009*

In view of the discussion made above, the compensation awarded to the appellants is reassessed as follows:-

Sr. No.	Head	Calculation
1.	Income	6000/- p.m.
2.	Compensation after applying multiplier of 13	6000x12=72,000/- 72,000x13=9,36,000/-
3.	Conventional heads i.e. loss of consortium, funeral expenses etc.	70,000/-
	Total	9,36,000+70,000 =10,06,000/-

The aforesaid enhanced compensation would be apportioned equally amongst the appellants and would be paid to them along with interest @ 6% from the date of filing of the claim petition and till actual realization.

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

26.07.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No