IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5689 of 2014
Date of Decision.24.01.2018

Ravi Kanta ......Appellant

Vs

Dharam Singh and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harsh Aggarwal, Advocate
for the appellants.

Mr. S.S. Sidhu, Advocate
for respondent No.3-insurance company.

Mr. Maninder Singh Dhindsa, Advocate
for respondent Nos.4 to 6.

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AMIT RAWAL J.(ORAL)

The appeal is for enhancement of compensation for death of one Naman Kumar @ Johny aged 30 years, who died in a motor accident occurred on 15.03.2013. The claimants before the Tribunal were mother, widow and two minor children. However, before this Court only mother is in appeal and widow and minor children are respondent No.4 to 6. The deceased was stated to be running an iron and cement store and earning ₹25,000/- per month.

The Tribunal while assessing the compensation had taken the income of the deceased as ₹2,36,349/- per annum by relying upon Ex.P4 i.e. the income tax return for the assessment year 2011-2012. It provided 50% increase on the same, deducted 30% as income tax, made a deduction of 1/3rd and adopted a multiplier of 17 to assess the loss of dependency as ₹28,12,548/-. In addition to this, the Tribunal added ₹1 lac for loss of

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consortium, ₹25,000/- as funeral expenses and ₹5000/- as loss of estate, thus, the total compensation assessed was ₹29,42,548/-.

Mr. Harsh Aggarwal, learned counsel appearing for the appellants submitted that the Tribunal has wrongly deducted the income tax after applying the future prospect to the extent of 50%, which is not the scope of ratio decidendi culled out by Hon'ble Supreme Court in ***National Insurnace Company Ltd. Vs. Pranay Sethi and others 2017 (13) SCALE 12*** wherein it has been held that the actual income shall be, less tax, therefore, the future prospect ought to have been applied after determining the actual income. The Tribunal has wrongly held that since the mother was dependent upon his husband, she could not be said to be dependent upon the deceased-son for making a deduction towards personal expenses, therefore, there is definite scope for enhancement.

Per contra, Mr. S.S. Sidhu, learned counsel appearing on behalf of the insurance company submitted that all the heads of claim have been taken care of sufficiently by the Tribunal, thus, there is no scope for enhancement.

I have heard learned counsel for the parties, appraised the paper book and of the view that the Tribunal grossly erred in deducting the income tax to the extent of 30% after applying the future prospect on the income of the deceased. As per income tax return for the assessment year 2012-2013, the tax payable by the deceased was ₹4230/-, therefore, I will deduct the same from the gross income of ₹2,36,349, which comes to ₹2,32,119/- per annum. I will provide a future prospect to the extent of 40% on the same, make a deduction of $1/4^{th}$ instead of $1/3^{rd}$ as the mother, if not earning any income, can always be dependent upon the son and

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adopt a multiplier of 17 to assess the loss of dependency as ₹41,43,324/-. I will further add to it ₹40,000/- for loss of consortium and ₹15,000/- each for loss of estate and funeral expenses.

The total compensation payable shall be ₹42,13,324/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till realization.

I will exercise the powers conferred under Order 41 Rule 33 CPC for providing compensation to the widow and minor children of the deceased, therefore, the enhanced amount of compensation shall be distributed amongst the widow, two minor children and the mother in the ratio of 2:2:2:1 i.e. the mother will get half share in comparison to the share of widow and minor children. The liability shall remain the same as has been determined by the Tribunal.

In view of the aforementioned, the award passed by the Tribunal is modified to the above extent and the appeal stands allowed.

(AMIT RAWAL)
JUDGE

January 24, 2018
Vijay Asija/Pankaj*

Whether reasoned/speaking Yes

Whether reportable No

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