IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No.5699 of 2014
Date of decision:- 01.03.2018

Kanta Rani and Others ...Appellants

Versus

Aas Mohammad and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Munish Kumar, Advocate, for
Mr.Paramjit Singh Jammu, Advocate,
for the appellants.

Mr. D.L. Gulati, Advocate, for
Mr. Vinod Bhardwaj, Advocate,
for respondent Nos.1 and 2.

Mr. Subhash Goyal, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM No. 15821-CII of 2014

This is an application for condonation of delay of 40 days in refilling the present appeal.

For the reasons mentioned in the application, same is allowed and delay of 40 days in refilling the present appeal is condoned.

Accordingly, present application stands disposed of.

Main Case:

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident

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Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal') vide award dated 11.02.2014, on account of death of Parmesh Kapoor son of Narender Kapoor in a motor vehicular accident which took place on 01.07.2011.

FACTS NOT IN DISPUTE

Brief facts of the case are that, on 01.07.2011at about 8.00 P.M. Parmesh Kapoor (since deceased) after loading wood in his canter Make Tata 709 bearing registration No.RJ-13G/4532, started from Sirsa to Yamuna Nagar, on his correct (left side) of the road. When he reached near the bus stand of Kalram, the driver of Truck Trolla bearing registration No. UP-81R/9153 (hereinafter called as offending vehicle for short) while ignoring the traffic rules and acting in a most negligent and careless manner, parked the offending vehicle in the middle of the road, without showing any indicator/parking light and due to darkness, the same was not visible and consequently, canter of the deceased struck against the standing truck trolla, resulting into the death of Parmesh Kapoor at the spot. After the accident, Kaithal where post mortem examination of his dead body was got conducted. Regarding the said accident, an FIR N. 99 dated 2.07.2011, under Sections 283/304-AIPC was registered against respondent No.1.

Consequently, claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of

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negligent driving of offending vehicle by respondent No.1. Claimants deposed that at the time of accident/death, deceased was 48 years of age at and he was earning Rs.15000/- per month by working as Driver.

This finding was rightly given on the basis of FIR, and others documentary evidence led by the claimants. No proof was found regarding salary of the deceased and Tribunal took salary of the deceased as Rs. 6000/- per month as he was least capable of earning being a driver. As per the law laid down in ***Sarla Verma and others vs. Delhi TransportCorporation and another*** , 2009 (3) RCR (Civil) Page 77, in case of deceased's age of 48 years (as per the post mortem report Ex. P5, multiplier of 13 would be applicable, to calculate the amount of compensation payable to the claimants. Hence, Tribunal assessed the compensation as under:

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs. 6,000/-
(ii)	1/4th deducting from (i) towards personal expenses	Rs.6,000-2500=Rs.4,500/-
(iii)	Multiplier applied	Rs.4500X12X13=7,02,000/-
(iv)	Compensation towards loss of consortium.	Rs. 10,000/-
(v)	Compensation towards loss of love and affection	Rs.10,000/-
(vi)	Compensation towards last rites and funeral expenses	Rs. 5,000/-
(vii)	Compensation towards loss of estate	Rs. 3,000/-
	Total Compensation	Rs. 7,30,000/-

Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

<u>REASSESSED COMPENSATION</u>

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The fact of accident is admitted and proved. In the peculiar facts and circumstances of the case, to meet the ends of justice and compensation awarded by the Tribunal requires to be reassessed keeping in view the judgments passed by Hon'ble Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017 wherein t***he issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

> *"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be*

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extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

In the present case, the compensation is being reassessed and 25% future prospects also added as per the judgment above:-

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs. 6,000/-
(ii)	25% added in (i) towards future prospects	Rs.6,000+1500=Rs.7,500/-
(iii)	1/4th deducting from (ii) towards personal expenses	Rs.7,500 -Rs.1875= Rs.5,625/-
(iv)	Multiplier applied	Rs.5,625X12X13= 8,77,500/-
(v)	Compensation towards conventional heads	Rs. 70,000/-

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Sr. No.	*Heads*	*Calculations*
	Total reassessed compensation	Rs.9,47,500/-
	Enhanced amount of compensation	**Rs.9,47,500 -7,30,000=Rs.2,17,500/-**

The enhanced amount of compensation of **Rs.2,17,500/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. As per the judgment of Hon'ble Supreme Court in case ***Shri Nagar Mal and Ors versus The Oriental Insurance Company Ltd. And Ors decided on 19.01.2018*** the enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified sto the above extent and the present appeal is partly allowed.

01.03.2018 **(RITU BAHRI)**
Riya Grover ***JUDGE***

Whether speaking/reasoned Yes
Whether reportable No

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