IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4348 of 2015 (O&M)
Date of decision: 23.02.2018

Smt. Chameli Devi and others ... Appellants

Versus

Mohammed Saleem and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Raja Sharma, Advocate
for the appellants.

Mr. Arun Sharma, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Anil in a motor vehicular accident that took place on 28.06.2012.

The Tribunal has awarded compensation of Rs.5,58,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Deduction for personal expenses	50%
3. Multiplier	14
4. Loss of dependency	Rs.3,78,000/-
5. Loss of love and affection	Rs.30,000/- (each of the claimants)
6. Loss of estate	Rs.10,000/- (each of the claimants)

7. Transportation charges	Rs.10,000/-
8. Funeral and last rites	Rs.10,000/-

Counsel for the appellants would contend that the deceased was working as Supervisor with a private firm at salary of Rs.10,000/- per month, proved by Chameli Devi PW1 and Ikram PW3 and accordingly, income of the deceased is liable to be assessed at Rs.10,000/- per month. Claimants are entitled to increase in income for future prospects @ 40%. As the deceased was 22 years old, appropriate multiplier in the light of judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** should be 18. The application for compensation was filed by the widowed mother and three siblings of the deceased, therefore, deduction for personal expenses should be 1/3rd in place of 50%. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the other hand, has submitted that the Tribunal has rightly allowed deduction for personal expenses @ 50% as claimant No.2 Jyoti was married as deposed by Chameli Devi PW1. Another submission made by counsel is that compensation under conventional heads allowed by the Tribunal needs modification in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

Counsel for the claimants, in reply, would state that as the insurance company has not preferred an appeal, it cannot seek reduction of compensation under conventional heads.

Before adverting to the submissions made by counsel for the parties, it is appropriate to deal with the submission made by counsel for the claimants that insurance company cannot seek reduction in compensation under conventional heads allowed by the Tribunal. As per the settled position in law, the Tribunal and so also the Courts have an obligation to assess just and reasonable compensation which cannot be a bonanza or source of profit or largesse. Equally settled is that the Court in appeal should pass an order which ought to have been passed by the trial Court in view of provisions of Order 41 Rule 33 of the Code of Civil Procedure. In this view of the matter, contention raised by counsel for the claimants that intervention with regard to compensation allowed under conventional heads is not justified, is misconceived and liable to be rejected.

The Tribunal has assessed income of the deceased at Rs.4500/- per month. The claimants examined Ikram PW3 to prove that the deceased was working as Supervisor at salary of Rs.10,000/- per month. However, Ikram did not produce any documentary evidence with regard to employment much less salary of the deceased. There is nothing on record suggestive of the fact that the deceased was an educated person. Under the circumstances, the Tribunal has rightly refused to rely upon testimony of Ikram PW3 with regard to income of the deceased. However, taking into consideration the minimum wage fixed by the State of Haryana and available at the relevant time, income of the deceased is assessed at Rs.5000/- per month. As the deceased was 22 years old, appropriate multiplier, in the circumstances, would be 18. In this context, reference can be made to judgments of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**, **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315** and **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

Claimants shall be entitled to increase in income for future prospects @ 40%. The Tribunal has applied deduction of 50% for personal expenses of the deceased. The application for compensation was filed by the widowed mother, one sister and two minor brothers of deceased Anil. Counsel for the claimants has not refuted contention of counsel for the insurance company that Jyoti, sister of the deceased was married and settled in her matrimonial home. In the given scenario, claim for compensation is maintainable on behalf of mother and two minor brothers of the deceased. In **Sarla Verma's case** (supra), it has been held that in case deceased (unmarried) leaves behind a large number of siblings, deduction for personal expenses can be deviated from 50%. In the case in hand, the deceased has not left behind large number of dependents. Under the circumstances, deduction for personal expenses allowed by the Tribunal cannot be faulted with. In this manner, loss of dependency comes to

Rs.7,56,000/- (Rs.5000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

Total compensation is Rs.7,86,000/- and the additional amount is Rs.2,28,000/- (7,86,000 – 5,58,000), payable with interest @ 7.5% per annum from the date of petition till realization to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

23.02.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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