IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4541-2015 (O&M)
Date of decision: 14.11.2018

Ruby and others .... Appellants

Versus

Subhash and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Rahul Srivastava, Advocate for
Mr. Vikram Punia, Advocate
for the appellants.

Mr. Ram Avtar, Advocate
for respondent No. 2.

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Avneesh Jhingan, J.

The award dated 13.01.2015 passed by Motor Accident Claims Tribunal, Sonepat (hereinafter referred to as the 'Tribunal') has been assailed by the children of Kamlesh (deceased), who lost her life in a motor vehicular accident that took place on 23.05.2014.

A major daughter and two minor sons are the appellants. The owner-cum-driver of Mahindra Max bearing registration No.HR-69B-4352 (for brevity, 'offending vehicle') and insurer of the offending vehicle i.e. National Insurance Company Limited, have been arrayed as respondents No.1 and 2 respectively in the present appeal.

The brief facts necessary for adjudication of the appeal are that on 23.05.2014, Kamlesh, aged 42 years, was going home, on her way, she crossed the offending vehicle, suddenly, the driver of the offending vehicle reversed it and dashed against her. Due to the impact, she fell down and sustained injuries. She was taken to General Hospital, Sonepat, where she was declared dead. FIR No.132 dated 23.05.2014 was registered at Police Station Sadar, Kundli.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') was filed by the legal heirs of the deceased.

The Tribunal, after considering the facts and on appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The driver-cum-owner and insurer of offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹3,61,000/- along with interest @ 7.5% per annum.

The claimants pleaded before the Tribunal that the deceased was earning ₹12,000/- per month from agricultural work and dairy farming but they failed to substantiate the occupation and monthly earning of the deceased. The Tribunal assessed the monthly contribution of the deceased towards family as ₹2,000/-. Multiplier of 14 was applied. ₹25,000/- was awarded for funeral expenses.

Learned counsel for the appellants contended that the monthly income of the deceased assessed by the Tribunal is on the lower side. She was a sole bread earner of the family and taking care of three children including two minor children. His grievance is that the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer argued that the claimants failed to adduce any evidence to prove the occupation and monthly earning of the deceased. In such circumstances, she can only be treated as a house wife.

From the perusal of the record, it is evident that there is no evidence to prove that the deceased was engaged in agricultural work and was carrying dairy farming. The only evidence is that she owned two acres of land. There is nothing on record to show that the same was cultivated by her. But still, role of the deceased as a house maker cannot be disputed. A contribution of the mother towards the family cannot be equated in the monetary terms.

The Hon'ble Apex Court in ***Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others, 2015 (4) SCC 237***, has held as under:

> *"Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A housewife/home-*

> *maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependancy."*

In the above cited decision, it has been laid down that the contribution of house wife cannot be under-estimated.

As there is no proof regarding the monthly earning of the deceased, the minimum wages prevalent in the State of Haryana can be a yardstick to assess the notional income of the deceased. The minimum wages of an unskilled labouer at the time of accident in the State was ₹5547/- per month. It would not be appropriate to equate the sole bread earner of the family and a housewife with an unskilled labourer. In such circumstances, it would be appropriate that the notional income of the deceased is assessed as ₹6,000/- per month.

There is no dispute raised that she was 42 years of age at the time of accident, hence, multiplier of 14 is to be applied. The income of the deceased assessed is notional income, hence, no deduction for self expenses is to be made.

This Court relying upon a decision of Hon'ble the Apex Court in case of ***Arun Kumar Aggarwal and another Versus National Insurance Company and others (2010-3) 159 PLR 428 (SC)*** in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others, Vol. CLXXII (2013-4) 329***, has held as under:

> *"15. After the decision in Lata Wadhwa's case*

(supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

In view of the decision quoted above, no deduction for self expenses is to be made.

Having due regard to the decision of Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157*** the claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate.

In view of the above discussion, the compensation is recalculated as under :-

Annual income	₹72,000/-
Applying multiplier of 14	₹10,08,000/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Total	₹10,38,000/-

The award dated 13.01.2015 is modified to the extent that the amount awarded by the Tribunal of ₹3,61,000/-is enhanced to ₹10,38,000/-.

The claimants shall be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

14.11.2018
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1.Whether the order is speaking/reasoned: Yes/No

2.Whether the order is reportable : Yes/No