IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4643 of 2015 (O&M)
Date of decision : August 24, 2018

Baljit Kaur and another .....Appellants

Versus

Pawan Kumar and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Satbir Rathore, Advocate
for the appellants.

Mr. Amandeep Singh, Advocate
for respondent No. 2.

Ms. Alka Joshi, Advocate
for respondent No. 3.

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LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as the 'Tribunal') on account of death of Surjit Singh vide award dated 01.04.2015.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, minor son and parents of the deceased filed petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Surjit Singh on 05.03.2014 in a motor vehicle accident. Surjit Singh alongwith his neighbour Gursharan Singh, who was a pillion rider, had gone to bring food on his motorcycle bearing registration No. PB-07AM-9082. When they reached near T-point Hazipur Chowk, Dasuya, a Truck bearing registration No. PB-08T-7497 driven by respondent No.1 in a rash and negligent manner came from behind and hit the motorcycle. Surjit Singh fell down on the road and his head was crushed under the rear tyres of the truck. He succumbed to his injuries on the spot. The deceased was stated to be working as Sales Manager in Sodhi Feed Mills, earning a sum of ₹20,000/- per month. Compensation was claimed.

Claim was resisted by the respondents. Following issues were framed by the learned Tribunal:

1. Whether Surjit Singh son of Ram Singh died in a roadside accident due to rash and negligent driving of respondent No. 1 while driving of vehicle bearing No. PB-08T-7497? OPA
2. Whether the respondent No. 1 was not having valid driving licence at the time of accident? OPR.
3. Whether the truck bearing No. PB-08T-7497 was being used for a purpose otherwise than insured and was not covered under the terms of the insurance policy? OPR
4. Whether claim application is not maintainable? OPR
5. Whether claim petition is bad for non joinder and mis-joinder of necessary parties? OPR
6. If issue No. 1 is proved, whether the claimants are entitled for compensation, from whom and to what extent?OPA
7. Relief.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 05.03.2014 due to rash and negligent driving of the offending Truck bearing registration No. PB-08T-7497 by respondent No. 1. Learned Tribunal awarded a sum of ₹11,61,000/- with interest at the rate of 8% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹6,500/- per month. Deduction of 1/4th was effected, keeping in view the number of dependants. Multiplier of 16 was applied as the deceased was 31 years old at that time. Sum of

₹25,000/- was awarded on account of funeral expenses besides ₹50,000/- for loss of love and affection and ₹ 50,000/- for loss of estate. Additionally, sum of ₹1,00,000/- was afforded to appellant No. 1 towards loss of consortium

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that income of the deceased has been wrongly assessed as ₹6,500/- per month. Evidence was led by the claimants to prove that the deceased – Surjit Singh was working as a Sales Manager in Sodhi Feed Mills. AW2 Gurmeet Singh specifically stated before the learned Tribunal that he is a proprietor of the Sodhi Feed Mills, Hardothala Dasuya. He proved the copy of ledger on record showing salary of Surjit Singh. He proved salary receipt Exs.A1 to A23. However, this evidence was ignored by the learned Tribunal on the ground that there is no evidence to show that AW2 was indeed the proprietor of the Sodhi Feed Mills and neither was any document placed on record to show that there is any firm of the name and style of Sodhi Feed Mills. It is further submitted that even the minimum wage of an unskilled labourer was more than ₹6500/- per month in the State of Punjab and a skilled labourer was earning minimum wage of ₹7427.75, therefore, income assessed should be higher. It is further contended that nothing has been awarded on account of loss of future prospects. It is, however, conceded that in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, compensation awarded under the conventional heads is required to be reduced. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company submits that compensation awarded is reasonable. In fact, much higher amount has been afforded under the conventional heads than what is due towards the claimants. It is further submitted that income of the deceased as assessed is adequate. It is further contended that deduction of 1/4th has been applied whereas it should be 1/3rd, keeping in view the number of dependants. Father of the deceased, it is submitted, is not a Class - I legal heirs and there is nothing on record to show that he was dependent upon the deceased. Learned counsel submits that though no appeal has been filed by the insurance company, she is entitled to raise this ground once the compensation is to be re-worked.

Heard learned counsel for the parties.

AW2 Gurmeet Singh has indeed deposed that the deceased Surjit Singh was working as Sales Manager at the time of the accident. It is to be noted that there is no evidence produced by this witness to show that he is the proprietor of the Sodhi Feed Mills. Be that as it may, the deceased is at least entitled to the minimum wage of a skilled labourer in the year 2014 in State of Punjab i.e. ₹7427.75 rounded off to ₹7428/-. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 40% (₹2791/-) is afforded in view of the age of the deceased (31years), which takes the income of the deceased to ₹10,399/- per month. In view of laid down by the Hon'ble Supreme Court in case of **Sarla Verma** (supra), deduction of 1/4th is to be applied as number of dependants is four (4), thereby rendering income of the deceased to be ₹7800/-(10399-2599). Applying a multiplier of 16, dependancy of the claimants is, therefore, assessed as ₹14,97,600/- (₹7800x12x16). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow being entitled to ₹40,000/- on account of loss of consortium. Claimants are, thus, entitled to a total compensation of ₹15,67,600/- detailed as under:-

Loss of dependency (₹7800x12x16)	₹14,97,600/-
Loss of consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹15,67,600/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(Lisa Gill)
Judge

August 24, 2018
rts

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