IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6259-2014 (O&M)
Date of decision: 05.02.2018

MAHINDER KAUR ... Appellant

Versus

SHYAM TYAGI & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sandeep Verma, Advocate
for the appellant.

Mr. M.B. Jain, Advocate
for the insurance company.

****

REKHA MITTAL, J. (Oral)

The claimant is in appeal seeking enhancement of compensation on account of death of Harjeet Singh in a motor vehicular accident that took place on 31.12.2007.

The Tribunal has awarded compensation to the tune of Rs.2,00,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Multiplier	10
3. Deduction for personal expenses	50%
4. Loss of dependency	Rs.2,70,000/- *(50% has been allowed as contributory negligence to the extent of 50% has been attributed to the deceased.)*
5. Medical expenses	Rs.10,000/-
6. Funeral expenses and last rites etc.	Rs.25,000/-

7. Loss of love and affection and loss of estate Rs.30,000/-

Counsel for the appellant has assailed findings of the Tribunal attributing 50% negligence to the deceased in the light of Section 128 of the Motor Vehicles Act, 1988 (in short 'the Act'). It is argued with vehemence that even if three persons were travelling on the motorcycle driven by Harjeet Singh, there is nothing on record suggestive of the fact that the said fact has in any manner whatever contributed in causing the accident. According to counsel, triple riding may invite some penal consequences, if the rules so permit but that itself is not a ground to attribute negligence to the driver or riders of the two wheeler.

Another submission made by counsel is that compensation awarded by the Tribunal needs enhancement. Claimant is entitled to increase in income for future prospects and 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**.

Counsel representing the insurance company has supported findings of the Tribunal attributing 50% negligence to the deceased. With regard to quantum of compensation, it is argued that the Tribunal has wrongly assessed income of the deceased at Rs.4500/- per month whereas the minimum wage at the relevant time was approximately Rs.3600/- per month. Compensation awarded under conventional heads needs to be restricted to Rs.30,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. It has also been urged that multiplier is to be applied on the basis of age of the claimant and not that of the deceased.

A plain reading of observations made by the learned Tribunal attributing 50% negligence to the deceased leaves no manner of doubt that the Court has merely relied upon Section 128 of the Act to record its conclusion as such. Section 128 of the Act provides for safety measures for drivers and pillion riders. Counsel for the insurance company has failed to point out any provision in the Act that if a person uses a two wheeler in violation of Section 128 of the Act, it would be of penal consequences much less a ground for attributing contributory negligence to driver of the vehicle. He has further failed to point out any materials on record that Harjeet Singh, in any manner, contributed to the accident to attribute contributory negligence to the deceased. Under the circumstances, findings recorded by the Tribunal attributing 50% negligence to the deceased cannot be allowed to sustain and liable to be set aside. In this context, reference can be made to judgments of this Court **Banwari Lal and another VS. Ran Singh and others, FAO No.2191 of 2014, decided on 23.08.2016** and **Karnail Singh Vs. Balwinder Singh, 2014 (7) RCR (Civil) 177.**

This brings the Court to quantum of compensation payable to the claimant. The Tribunal has assessed income of the deceased at Rs.4500/- per month. Claimant has failed to adduce satisfactory much less cogent evidence to prove income of the deceased. When the case is examined in the light of minimum wage of a casual labour notified by the State of Haryana and available at the relevant time, income of the deceased is assessed at Rs.3600/- per month. Claimant shall be entitled to increase in income for future prospects @ 40%. Deduction for personal expenses allowed by the Tribunal is affirmed. As the deceased was 30 years 8 months old at the time of occurrence, in the light of judgments of Hon'ble the Supreme Court **Sarla Verma's case** (supra), **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315** and **Pranay Sethi's case** (supra), admissible multiplier is 16. In this manner, loss of dependency comes to Rs.4,83,840/- (Rs.3600 x 12 x 16) + (40% future prospects) – (50% deduction for personal expenses).

Under conventional heads, claimant shall be entitled to Rs.30,000/-, namely Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Amount of Rs.10,000/- for medical expenses allowed by the Tribunal is affirmed. In view of the above, total compensation is Rs.5,23,840/- and the additional amount is Rs.3,23,840/- (5,23,840 – 2,00,000), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

05.02.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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