IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 6277 of 2014(O&M)

Date of Decision: September 26 , 2018.

Roopwati and others ...... APPELLANT (s)

Versus

Ram Kishan and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vikas Kumar, Advocate
for the appellants.

Mr. M.B.Jain, Advocate
for respondent No.3 – Insurance Company.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Palwal (for short, the 'Tribunal') vide impugned award dated 13.05.2013 on account of death of Hari Ram in a motor vehicle accident.

Brief facts necessary for adjudication of the case are that, the claimants filed a petition under Sections 166/140 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of Hari Ram, who lost his life in a motor vehicle accident which took place on 22.11.2010. FIR No.430

dated 23.11.2010, under Section 279/337/304A IPC, Police Station Camp Palwal was registered against respondent No.1-Ram Kishan. The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the three wheeler (Auto rickshaw) bearing registration No. HR-38Q-0933 by respondent No.1 – Ram Kishan. The said finding of the learned Tribunal has attained finality.

The learned Tribunal awarded a sum of ₹4,33,000/- as compensation to the appellants vide impugned award dated 13.05.2013. Income of the deceased was assessed as ₹5,000/- per month. Deduction to the extent of $1/4^{th}$ on account of personal expenses was effected and multiplier of 9 was applied. ₹5,000/- each towards funeral expenses, loss of consortium and loss of estate were awarded.

Learned counsel for the appellants does not seriously raise any objection to the income of the deceased i.e., ₹5,000/- per month as assessed by the learned Tribunal. However, it is vehemently argued that age of the deceased has been wrongly held to be 60 years. As per the post-mortem report, the deceased was stated to be 50 years old. The claimants in their oral evidence stated the deceased-Hari Ram to be 50 years old. It is contended that the learned Tribunal, merely on the basis of medical intimation form (Ex.P8) and the statement of PW1-Dev Parshad to the extent that age of the mother of the deceased was 80 years, has concluded that the deceased was 60 years old at the time of the accident. It is contended that this is clearly erroneous and based on a total misreading of the evidence on record. Learned counsel prayed that the age of the deceased be held to be 50 years. Multiplier be accordingly varied and future prospects be also afforded to the claimants in terms of the guidelines laid down by the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others,** ***2017(16) SCC 680***. Compensation under the conventional heads is stated to be meagre. Learned counsel for the appellants is however unable to deny that deduction to be effected is 1/3rd instead of 1/4th in terms of the judgment of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil)*** *77*.

Learned counsel for respondent No.3 – Insurance Company on the other hand prays that the impugned award does not call for any enhancement of the compensation as the same is reasonable and justified in the facts and circumstances of the case. He prays for upholding the impugned award.

I have heard learned counsel for the parties and have gone through the available record.

Liability of the Insurance Company is not in dispute and neither is there a dispute regarding the accident being caused by the rash and negligent act of respondent No.1 – Ram Kishan. A perusal of the record reveals that age of the deceased-Hari Ram is stated to be 50 years in the post-mortem report. Ration card (Ex.P2) does not clearly reflect the age of the deceased-Hari Ram. Age of his wife is also mentioned as 50 years. His children are mentioned to be 14 years and 12 years, respectively. In my considered opinion, the learned Tribunal has erred in holding the age of the deceased to be 60 years at the time of the accident merely on the basis of the entry in the medical intimation form (Ex.P8) as well as statement of PW1-Dev Parshad. Medical intimation form (Ex.P8) is the intimation sent by the Guru Nanak Hospital to the Police Station City Palwal. The same cannot be relied upon to determine the age of the deceased. Moreover, it does not stand to reason that since the age of the mother of the deceased was 80 years as per the statement of PW1-Dev Parshad, the deceased was 60 years at the time of the accident. PW1-Dev Parshad, brother of the deceased admitted his own age to be forty four (44) years. The deceased Hari Ram was the elder brother. It is thus safe to conclude that the deceased was about 50 years old at the time of the accident. Accordingly, multiplier of 13 instead of 9 is to be applied. In terms of **Pranay Sethi's** case (supra), 10% increase in income is afforded as well. As noted earlier income of the deceased i.e., ₹5,000/- per month as assessed by the learned Tribunal is upheld. Deduction of 1/3rd instead of 1/4th is to be applied in terms of **Sarla Verma's case** (supra). Medical expenses of ₹13,000/- as ordered by the learned Tribunal are maintained.

Appellants-claimants are, thus, entitled to the amount of compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	5,000 p.m. i.e. ₹60,000/- per annum
2.	Total income after addition at the rate of 10% on account of future prospects	60,000 + (60,000 **x** 10%) = 66,000
3.	Income after deduction of 1/3rd on account of personal expenses	66,000 – (66,000 **x** 1/3) = 44,000
4.	Total dependancy after applying a multiplier of 13	(44,000 **x** 13) = 5,72,000
5.	Loss of consortium	40,000
6.	Loss of estate	15,000
7.	Funeral expenses	15,000
8.	Medical expenses	13,000
	Grand Total	₹6,55,000/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the claimants as well as manner of disbursement as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

September 26 , 2018.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No