

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

FAO 4808 of 2015 (O&M)
Date of decision: 30.01.2018

Pushpa etc. *Appallants*

Versus

Dal Chand etc. *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Randhir S Hooda, Advocate
for the appellants

Mr. Satpal Dhamija, advocate
for the insurance company

-.-

Rekha Mittal, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Budh Ram in a motor vehicular accident that took place on 13.01.2010.

The Tribunal has awarded compensation of Rs.6,02,000.00, detailed hereunder:-

Monthly income of the deceased	Rs.4,500.00
Deduction for personal expenses	1/4 th
Multiplier	14
Loss of dependency	Rs.5,67,000.00
Loss of consortium	Rs.20,000.00
Funeral expenses	Rs.10,000.00
Loss of estate	Rs.5,000.00

Counsel for the claimants has submitted that the Tribunal has held that deceased was 45 years old and accordingly applied multiplier of 14 for computing loss of dependency. In the postmortem report, age of the deceased is recorded to be 38 years. It is argued with vehemence that the Tribunal has assessed age of deceased on the basis of surmises and conjectures by holding that husband is always 2 to 5 years older than the wife. It is further argued that Smt. Pushpa wife of the deceased appeared in the witness box but no such fact has been elicited in her cross examination that her husband was older to her much less by particular number of years. In addition, it is argued that claimants are entitled to benefit of increase in income for future prospects. Compensation under conventional heads also needs enhancement.

Counsel for the insurance company, on the other hand, would argue that as the Tribunal has assessed income of the deceased by taking him as a casual worker, his income is liable to be assessed on the basis of minimum wage of an unskilled worker at the relevant time. He has supported findings of the Tribunal whereby the deceased was held to be 45 years old.

The claimants failed to adduce any clear evidence with regard to avocation and income of the deceased. However, the deceased left behind family consisting of his wife and children. There is nothing on record suggestive of the fact that deceased was not in a position to earn livelihood for his family. Taking a clue from the minimum wage fixed by the State of Haryana and available at the relevant time, income of the deceased is assessed at Rs.4,250.00 per month. The Tribunal has rightly

allowed deduction to the extent of 1/4th qua personal expenses of the deceased.

Indisputably, in the postmortem report, age of the deceased is recorded as 38 years. Smt. Pushpa, wife of the deceased appeared in the dock in October 2012 and stated her age to be 40 years. She was not asked about the age of her husband. Ordinarily, husband may be older than the wife but the rule is not absolute. Under the circumstances, interest of justice commands that compensation is assessed by treating the deceased in the age bracket of 36-40 years. Accordingly, claimants shall be entitled to increase in income for future prospects to the extent of 40% and multiplier of 15 for computing loss of dependency. In this view of the matter, loss of dependency comes to Rs.8,03,250.00, detailed as follows;-

Monthly income of the deceased	4,250.00
Multiplier	15
Increase in income for future prospects	40%
Deduction for personal expenses	¼

Under conventional heads, claimants shall be entitled to Rs.70,000.00, in the light of judgment of Hon'ble the Supreme Court *National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270*, detailed hereunder:-

Loss of consortium to widow	Rs.40,000.00
Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation comes to Rs.8,73,250.00 and additional amount is Rs.2,71,250.00 (Rs.8,73,250.00 – Rs.6,02,000.00) payable with interest at the rate of 7.5% per annum from the date of petition till

realization, in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

30.01.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No