IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-4087-2016 (O&M)
Date of Decision: 16.08.2018

Kamlesh & others --Appellants

Versus

Ram Dayal & others --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Saurabh Kapoor, Advocate for
Mr. Ashit Malik, Advocate for the appellants.

Mr. Sanjeev Kodan, Advocate for respondent no.3.

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TEJINDER SINGH DHINDSA.J (Oral)

This is claimants' appeal seeking enhancement of compensation.

Briefly, it may be noticed that a claim petition was filed under Sections 140 and 166 of the Motor Vehicles Act before the M.A.C.T., Kurukshetra seeking adequate and just compensation on account of death of Bharat in a motor vehicle accident that took place on 8.2.2015. Claimants were the parents and major sister of the deceased. As per claimants, Bharat (deceased) was riding a motorcycle and which was struck by a trolla bearing registration no. RJ-05GA-6067 (herein after to be referred to as the offending vehicle) and being driven in a rash and negligent manner by Ram Dayal.

The claim petition having been contested, the following issues were framed by the Tribunal:-

"1. Whether the accident resulting into death of Bharat Chakwalia and injuries suffered by Parvesh had taken place due to rash and negligent driving of the vehicle bearing registration no. RJ-05GA-6067 by the respondent no.?OPP

2. Whether claimants in MACP No.176 of 2015 are entitled *to the compensation as prayed for, from the respondents?OPP*

3. Whether claimant in MACP No.216 of 2015 is entitled to compensation as prayed for from the respondents?OPP

4. Whether there was violation of the terms and conditions of insurance policy and the respondent no.3 is not liable to pay any compensation?OPR

5. Relief."

In so far as Issue No.1 was concerned, findings were recorded in favour of the claimants and it was held that the accident in question took place on account of the rash and negligent driving by driver of the offending vehicle and which resulted in injuries to Bharat and to which he succumbed.

In so far as quantum of compensation is concerned, the Tribunal has assessed the monthly income of the deceased to be Rs.11,000/- and an increase in income of 50% towards future prospects has been awarded. Keeping in view the fact that deceased was unmarried, 50% deduction of income towards personal and living expenses, has been made. Age of the deceased was held to be 27 years and a multiplier of 17 was applied. Rs.25,000/- has been awarded towards funeral expenses. The total amount of compensation computed is Rs.17,08,000/-. The parents of the deceased were taken to be the claimants as claimant no.3 being the major sister of the deceased was held to be dependent upon her father and not on the deceased. Liability of the compensation amount was fastened jointly and severally upon the driver, owner and the Insurance Company.

The only issue involved in the instant appeal is with regard to quantum of compensation.

The solitary submission raised by counsel representing the claimants/appellants is that the income of Rs.11,000/- per month assessed by the Tribunal is on the lower side. In furtherance of such submission counsel states that deceased held a degree of Bachelor of Commerce and was also pursuing the course of Chartered Accountancy under the aegis of the Institute of Chartered Accountants of India. It was urged that deceased was merely 27 years on the date of the accident and would have had a bright future as a professional but for the unfortunate accident and demise.

Per contra, counsel representing the contesting Insurance Company submits that no interference in the matter is called for. No evidence had been adduced to prove the monthly income of Rs.40,000/- that had been claimed in the claim petition. It is submitted that the Tribunal has rightfully adverted to a Haryana Govt. Gazzette Notification of the Labour Department dated 19.10.1989 and on the basis thereof and corelating to the same to the date of the accident the monthly income has been correctly assessed as Rs.11,000/-.

Having heard counsel for the parties at length, this Court is of the considered view that there is scope for enhancement of compensation and particularly with regard to the parameter of assessing the monthly income of the deceased.

The uncontroverted factual position is that the deceased held a degree of Bachelor of Commerce and had also adduced on record certain certificates issued by the Institute of Chartered Accountants of India and which would clearly demonstrate that deceased was pursuing the course of Chartered Accountancy. Deceased was only 27 years of age on the date of accident/death. The accident had taken place on 8.2.2015.

The Hon'ble Apex Court in case of ***Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Anr., 2010(4) R.C.R (Civil), 917*** had dealt with the quantum of compensation in relation to a deceased who was

19 years old and pursuing his medical degree. While assessing the future earnings at Rs.1,60,000/- per month, the Apex Court had observed as follows:-

> *"On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like B.I.T., it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected 8 by Tata as well as Reliance Industries and was offered pay package of Rs. 3,50,000/- per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000/- per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs. 60,000/- per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis..."*

Adverting back to the facts of the present case the deceased was pursuing a professional course. Upon successful completion of the Chartered Accountancy course, it can also be reasonably assumed that he would have either explored a wide range of employment avenues or would have engaged himself in private consultancy.

Under such circumstances, it would be safe to presume and assess the monthly income of the deceased to be Rs.15,000/- per month.

Undoubtedly and as urged by learned counsel representing the contesting insurance company that no cogent and conclusive evidence had been adduced on behalf of the claimants as regards proof of income, yet, it cannot be lost sight of that even the Tribunal has proceeded on a wrongful assumption by applying the Haryana Govt. Gazette Notification dated 19.10.1989 to assess the monthly income of deceased as Rs.11,000/-. In such notification the average income was taken to be Rs.11,000/- of a professional assistant only for the purpose of employment in a govt. office and on contractual basis. There would be no basis to limit the future prospects of the deceased on becoming a Chartered Accountant to have been engaged only in a govt. office and that too on a contractual basis.

In view of the above, the monthly income of the deceased by way of approximation is assessed at Rs.15,000/- per month.

Concededly deceased was a bachelor and as such, Tribunal has rightfully deducted 50% of the income towards personal and living expenses. The Tribunal awarded an increase in income @ 50% towards future prospects. Since it is the case of the claimants themselves that deceased was 27 years of age and was self employed, the Tribunal ought to have granted increase in income towards future prospects @ 40% as per judgement of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017(4) R.C.R (Civil), 1009***. It is so directed.

Age of the deceased having been held to be 27 years and on which also there is no dispute, the multiplier of 17 that has been applied by the Tribunal is in conformity with the guidelines issued by the Apex Court in case of ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) R.C.R (Civil), 77***.

The Tribunal has awarded a sum of Rs.25,000/- towards last rites/funeral expenses. Such amount would now stand rationalized and a sum of Rs.30,000/- is awarded under the conventional heads of loss of estate and funeral expenses (Rs.15,000/- each).

In view of the above, the revised/enhanced compensation amount is computed as follows:-

Sr. No.	Head	Calculation
1.	Income	15,000/- per month
2.	40% increase in income towards future prospects	15,000+40%=21,000/-
3.	50% deductions towards personal expenses of the deceased.	21,000 ÷ 2 = 10,500/- 21,000-10,500 = 10,500/-
4.	Compensation after applying multiplier of 17	10,500x12 = 1,26,000/- 1,26,000x17 = 21,42,000/-
5.	Conventional heads (loss of estate, funeral expenses etc.)	30,000/-
6.	Total	21,42,000+30,000=Rs.21,72000/-

The aforesaid enhanced compensation amount be released in favour of the claimants along with interest @ 6% from the date of filing of the claim petition and till actual realization. The apportionment of the compensation amount and as directed by the Tribunal would stay intact.

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

16.08.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No