IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5282 of 2015 (O&M)
Date of decision:11.12.2018.

Smt. Ritu Devi and others

...Appellants

Versus

Sandeep and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: None for the appellants.

None for respondents No.1 and 2.

Ms. Vandana Malhotra, Advocate for respondent No.3/Insurance Company.

LISA GILL, J.

None had appeared on behalf of the appellants on the last date of hearing. Today again, there is no representation on their behalf despite the matter being called twice. However, keeping in view the fact that the present appeal has been filed by the claimants/appellants seeking enhancement of the compensation awarded to them, it is considered just and appropriate to decide the case on merits rather than dismiss the appeal in default or unnecessarily delay the matter.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Rohtak (`Tribunal' for short) vide award dated 01.08.2014 on account of death of Karambir in a motor vehicle accident on 05.08.2013.

The claimants, who are wife, son and parents of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Karambir due to injuries received in a motor vehicle accident which took place on 05.08.2013. FIR (Ex.P6) was registered against respondent No.1. It was pleaded that the deceased at the time of his death was earning Rs.12,000/- per month from agriculture and dairy farming. Compensation was thus prayed for.

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 offending vehicle by its driver. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality.

Learned Tribunal further concluded the deceased to be 32 years old at the time of his death and assessed his income as Rs.6000/- per month. Deduction of 1/4th was effected towards personal expenses. Multiplier of 16 was applied keeping in view the age of the deceased. Thus, total dependency was assessed at Rs.8,64,000/- (4500x12x16). A sum of Rs.1,00,000/- was awarded towards loss of consortium besides Rs.25,000/- for funeral expenses. Thus, the claimants were held entitled to total compensation of Rs.9,89,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till realisation.

Learned counsel for respondent No.3/Insurance Company submits that just and reasonable compensation has been awarded by the learned Tribunal and there is no evidence to justify any further enhancement. In fact, deduction of 1/4th has been wrongly effected whereas it should have been 1/3rd as there is nothing on record to show that claimant/father was dependent upon the deceased. It is thus prayed that this appeal be dismissed.

I have heard learned counsel for the Insurance Company and have gone through the record with her able assistance.

It is not in dispute that deceased died due to injuries received in a motor vehicle accident which took place on 05.08.2013 due to the rash and negligent driving of the offending vehicle by respondent No.1. Deceased was admittedly 32 years old at the time of accident. He is claimed to be earning a sum of Rs.12,000/- per month from agriculture and dairy farming, but there is no evidence on record to prove the same. Minimum wage of an unskilled worker in the State of Haryana at the time of death of the deceased was Rs.5341/-. Therefore, income of the deceased as assessed by the learned Tribunal at Rs.6000/- p.m. is upheld. In view of the judgment of Hon'ble the Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, 40% increase in income has to be afforded on account of future prospects. Multiplier of 16 has correctly been applied.

I do not find any merit in the argument raised by learned counsel for the Insurance Company that deduction of 1/3th should have been afforded. There is a specific averment in the claim petition that all the claimants including the 62 years old father of the deceased were dependent upon the deceased. There is no evidence on record to doubt the stand taken by the appellants. Insurance Company has not filed any appeal in this regard and neither any cross objections were preferred. Therefore, deduction of 1/4th is upheld. In view of the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018, appellant No.1 is entitled to Rs.40,000/- instead of Rs.1,00,0000/- towards spousal consortium, appellant No.2 is entitled to Rs.40,000/- towards parental consortium and appellants No.3 and 4 are entitled to Rs.40,000/- each towards filial consortium. The appellants are also entitled to Rs.15,000/- each for loss of estate and funeral expenses instead of Rs.25,000/- awarded towards funeral expenses.

Appellants are, thus, entitled to compensation, which is re-worked as under:-

Sr.No.	*Heads of Claim*	*Rupees*
1.	Income	6000 p.m. i.e., 72,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	72000+28,800 (72,000x40%) = 1,00,800/-
3.	Income after deduction of 1/4th on account of personal expenses	1,00,800–25,200 (1,00,800/4) = 75,600/-
4.	Total dependency after applying a multiplier of 16	(75,600 **x**16) =12,09,600/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of consortium to the appellants @ 40,000/- each 40,000x4=1,60,000/-	1,60,000/-
	Grand Total	13,99,600/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Apportionment and disbursement of the compensation shall be as per directions of the learned Tribunal in award dated 01.08.2014. 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.

With the abovesaid modification in the award dated 01.08.2014, present appeal is disposed of.

Copy of this order be conveyed to the appellants at the address available on the record. In case of any grievance, the appellants are at liberty to move an appropriate application within two months of the receipt of copy of this order.

(LISA GILL)
JUDGE

11.12.2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No