IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.43 of 2016 (O&M)
Date of decision : October 25, 2018

Sumitra Devi @ Sumitra and others .....Appellants

Versus

Ved Parkash and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Vivek Suri, Advocate
for the appellants.

Mr. D.K. Prajapati, Advocate
for respondent No. 3.

***

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the 'Tribunal') on account of death of Davinder Singh vide award dated 13.10.2015.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow and children of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Davinder Singh on 15.04.2014 in a motor vehicle accident caused due to the offending vehicle Swift car bearing registration No. PB-11-BK-1613 being driven by respondent No.1 in a rash and negligent manner. It was averred that Davinder Singh alongwith Head Constable Baldev Singh was going on foot from picket point near Vardhman Factory towards Shambhu Khurd on correct left hand side of the road. When they reached at the turning of railway station, Shambhu Khurd on Ambala – Rajpura road, offending vehicle Swift car bearing registration No. PB-11-BK-1613 driven at a very high speed and in a rash and negligent manner came from behind and struck against the deceased. As a result thereof, Davinder Singh fell down on the road and received multiple grievous injuries. He was taken to AP Jain, Hospital but he succumbed to his injuries. The deceased, aged 43 years, was working as Head Constable in Punjab Police, receiving a salary of Rs.40,000/- per month.

Claim petition was resisted by the respondents. Following issues were framed by the learned Tribunal:-

1. Whether Davinder Singh son of Lal Chand received injuries in a motor vehicular accident which took place on 15.04.2014 at about 11.45 p.m. within the jurisdiction of PS Shambu District Patiala due to the rash and negligent driving of Swift car No. PB-11-BK-1613 by Ved Parkash respondent No. 1 to which he succumbed?OPP
2. Whether the petitioners/claimants are entitled to recover any amount of compensation, if so, from whom? OPP.
3. Whether respondent No. 1 was not holding a valid and effective driving licence at the time of accident. If so its effect? OPR3
4. Whether respondent No. 2 has violated the terms and conditions of insurance police, if so its effect?
5. Relief.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 15.04.2014 due to rash and negligent driving of the offending swift car bearing registration No. PB-11-BK-1613 by respondent No. 1. Learned Tribunal awarded a sum of ₹38,77,207/- with interest at the rate of 6% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹24,457/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of

14 was applied as the deceased was 43 years old at that time. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded and a sum of of ₹50,000/- on account of loss of love and affection besides a sum of ₹25,000/- on account of funeral expenses.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that learned Tribunal has erred in assessing the income of the deceased, who was admittedly working as Head Constable with the Punjab Police as ₹24,457/- As per the salary slip (Ex.RW4/A) produced by the respondents themselves, total salary of the deceased in the month of March, 2014 is reflected to be ₹38,974/-. Deduction of ₹14,517/- has been wrongly effected. At best, a sum of ₹21,768/- per annum i.e. component of income tax is liable to be deducted from the total salary. It is, however, fairly stated that compensation awarded under the conventional heads may be reworked in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009** and **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018). It is further submitted that multiplier of 14 has been correctly applied and deduction of 1/3rd has also been correctly effected. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company while refuting the arguments raised by learned counsel for the appellants submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed, thus, impugned award dated 13.10.2015 be upheld.

Heard learned counsel for the parties.

I have perused the salary slip (Ex.RW4/A). The deductions in the salary on account of GPF etc. have wrongly been effected by the learned Tribunal while assessing the income of the deceased to be ₹24,457/-. therefore, income of the deceased is assessed as ₹38,974/- per month (₹4,67,688 per annum). A sum of ₹21,768/- is, however, to be deducted from the income of the appellant on account of income tax. Thus, total income of the appellant after deducting tax is ₹4,45,920/- (4,67,688-21,768). In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 30% (₹1,33,776/-) has to be afforded as the deceased was 43 years old at the time of accident, which takes the income of the deceased to ₹5,79,696/- per annum. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, deduction of 1/3rd is to be applied as number of dependants is three (3), thereby rendering income of the deceased to be ₹3,86,464/-(₹5,79,696-₹1,93,232). Applying a multiplier of 14, dependancy of the claimants is, therefore, assessed as ₹54,10,496/- (₹3,86,464 x14). The claimants are entitled to ₹15,000/- (instead of ₹25,000/-) for funeral expenses besides the claimant widow is entitled to ₹40,000/- (instead of ₹1,00,000/-) on account of loss of spousal consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited's** case (supra), appellants No. 2 and 3 i.e. children of the deceased are entitled to ₹40,000/- each on account of loss of parental consortium. Another sum of ₹15,000/- is afforded to appellants No. 2 and 3 on account of loss of estate.

Claimants are, thus, entitled to total compensation of ₹55,60,496/- detailed as under:-

Loss of dependency (₹3,86,464 x14	₹54,10,496/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium @ ₹40,000 (40,000 x 2)	₹80,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹55,60,496/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the entire amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(Lisa Gill)
Judge

October 25, 2018
rts

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