Sr. No. 228

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.726 of 2014 (O&M)
Date of Decision: 06.09.2018

Kavita and another

... Appellants

Versus

Devender Singh and others

... Respondents

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

Present:- Mr. S.P.Chahar, Advocate, for the appellants.

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

Mr. Jitender Nara, Advocate, for respondent Nos.4 and 5.

TEJINDER SINGH DHINDSA, J.(ORAL)

This is a claimants' appeal seeking enhancement of compensation.

Briefly, it may be noticed that a claim petition was filed under Section 166 of the Motor Vehicles Act by the appellants on account of demise of Manoj Kumar in a motor vehicle accident that took place on 03.06.2011 claiming compensation to the tune of Rs.20 lakhs. It would be apposite also to take note that even though claim petition had been preferred by the parents yet widow and minor son of the deceased were impleaded as proforma respondents.

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

1. ***"Whether deceased Manoj Kumar died in a motor vehicular accident occurred on 03.06.2011 on account of rash and negligent driving of vehicle bearing registration No. RJ-02-UA-1892 by respondent No.1? OPP***
2. ***If issue No.1 is proved, to what amount of compensation the claimants are entitled to and from whom? OPP***
3. ***Whether respondent No.1 was not holding a valid and effective driving licence to drive the offending vehicle at the time of accident? OPR***
4. ***Relief."***

As regards issue No.1, findings were returned by the Tribunal in favour of the claimants and it was held that Manoj Kumar had died on account of injuries suffered in an accident that took place on 03.06.2011 and on account of rash and negligent driving of Devender Singh of vehicle bearing registration No. RJ-02-UA-1892.

Insofar as quantum of compensation is concerned, monthly income of the deceased has been assessed as Rs.4900/- per month and by taking the age of the deceased as 33 years, multiplier of 16 has been applied to the multiplicand. Tribunal by taking the number of dependents as 04 i.e. widow, minor son as also aged parents has made deduction of 1/4th towards personal and living expenses of the deceased. An amount of Rs.10,000/- has been granted towards loss of consortium, Rs.10,000/- towards loss of estate and an equal amount of Rs.10,000/- has been granted towards transportation and funeral expenses. The total compensation amount computed by the Tribunal is Rs.7,30,800/- and have been apportioned in equal shares amongst all the four dependents i.e. claimants who were the parents of the deceased and proforma respondents No.4 and 5 in the claim petition i.e. widow and minor son of the deceased.

Instant petition has been preferred by the widow and minor son of the deceased and the parents have been impleaded as proforma respondents.

Counsel representing the claimants/appellants has argued that the Tribunal has completely overlooked the aspect as regards awarding increase in income towards future prospects. Further urged that even under conventional heads, compensation amount deserves to be enhanced. That apart counsel has further urged that there has been an error in calculation as well while making deduction towards dependency.

Per contra, Ms. Vandana Malhotra, Advocate representing contesting respondent Insurance Company would submit that the Tribunal has accepted father of the deceased to be a dependent while making 1/4th deduction and as per judgment of the **Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77,*** father could not have been taken as dependent. It is argued that under such circumstances, the Tribunal ought to have made a 1/3rd deduction from the monthly income towards personal and living expenses of the deceased.

Having heard counsel for the parties at length, this

Court is of the considered view that compensation amount requires to be re-assessed and suitably enhanced by keeping in view the parameters laid down in **Sarla Verma's case (supra) and *National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

In the present case, claimants had set up a claim that deceased Manoj Kumar was earning Rs.7000/- per month having been employed as a driver with one Radhe Sham. However, no cogent and credible evidence had been adduced to substantiate such claim. Under such circumstances, monthly income of the deceased has been assessed as Rs.4900/- per month as per relevant Government Notification and at par with the minimum wages admissible to a skilled worker. The same does not call for any interference.

Tribunal has taken the age of the deceased as 33 years and which is as per date of birth i.e. 18.04.1978 reflected in the driving licence adduced on record. Under such circumstances, no error is found in applying multiplier of 16 to the multiplicand.

The Tribunal has clearly erred in not awarding any increase in income towards future prospects. It is the case for the claimants themselves that deceased was self-employed. Taking the age bracket of the deceased to be between 30-40 years and by following the dictum laid down in ***Pranay Sethi's case (supra)*** increase in income @ 40% towards future prospects is awarded.

Even under the conventional heads, the amount already awarded by the Tribunal Rs.30,000/- would now stand enhanced to

Rs.70,000/- i.e. loss of consortium, loss of estate and funeral expenses.

The submission made by counsel representing the Insurance Company with regard to father of the deceased not to be taken as dependent is found to be without merit.

Observations made by the ***Apex Court in Sarla Verma's case (supra)***, in this regard and which would be relevant to the issue at hand and contained in para 15 of the judgment and are reproduced hereunder:-

> ***"15.Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses***

of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

The uncontroverted position in the present case is that mother of the deceased Santosh Devi had stepped into witness box and made a deposition as PW-1 to the effect that her husband (father of the deceased) was unemployed and fully dependent on the income of the deceased. Such oral deposition and testimony has not been rebutted at the hands of the Insurance Company. Under such circumstances, father of the deceased was taken as a dependent and $1/4^{th}$ deduction had been applied by the Tribunal. It is also the conceded position that the Insurance Company has not filed any cross appeal assailing the award dated 10.09.2013 passed by the Motor Accident Claims Tribunal, Rewari.

Under such circumstances, the cut of $1/4^{th}$ applied by the Tribunal towards personal and living expenses of the deceased is affirmed.

In view of the discussion hereinabove, the compensation amount is re-assessed as follows:-

Sr. No.	Head	Calculation
1.	Income Rs.4900/- p.m.	Rs.4900 + 40% future prospects =4900+1960=Rs.6860/-

2.	1/4th deduction towards personal and living expenses of the deceased	Rs.6860-1715=5145/- Rs. 5145 x 12=61,740/-
3.	Compensation after applying multiplier of 16	Rs. 61,740 x 16=9,87,840/-
4.	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.10,57,840/-

The afore calculated enhanced compensation amount be released in favour of the claimants i.e. widow, minor son and parents of the deceased and the apportionment as directed by the Tribunal would stay intact.

The enhanced compensation amount would also carry interest at the rate of 6 % from the date of filing of the claim petition till actual realization.

Petition is allowed in the aforesaid terms.

06.09.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes