IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 5852 of 2015 (O&M)
Date of decision: 22.05.2018

Harkishni and others .... *Appellants*

Versus

Hans Raj and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Anoop Bajwa, Advocate
Amicus Curiae appointed by the Court
on behalf of the appellants

Ms Nisha Puri, Advocate
for the appellants
Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No. 3

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Rekha Mittal, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Amit Kumar in a motor vehicular accident that took place on 22.04.2014.

The Tribunal has awarded compensation of Rs.7,55,000.00, detailed hereunder:-

Monthly income of the deceased	Rs.5,000.00
Deduction for personal expenses	$1/3^{rd}$
Multiplier	18
Loss of dependency	Rs.7,20,000.00
Loss of consortium to widow	Rs.20,000.00
Funeral expenses	Rs.10,000.00
Loss of estate	Rs.5,000.00

However, the claimants have been held entitled to compensation to the tune of 80% as 20% negligence has been attributed to the deceased on the basis of findings of the Tribunal on issue No. 1.

Counsel for the claimants would urge that in view of observations recorded in para 19 of the award, the Tribunal has attributed 20% negligence to the deceased. It is argued with vehemence that the mere fact that the accident was head on collision between two vehicles coming from opposite directions is not itself sufficient to attribute negligence to the victim. In addition, it is argued that no such fact has been elicited in cross examination of Ashok Kumar (PW2) that the deceased himself was negligent in causing accident. It is further argued that no such plea has been raised by the respondents before the Tribunal that the deceased was negligent in causing accident or present is a case of contributory negligence.

With regard to quantum of compensation, it is argued that the Tribunal has assessed income of the deceased at Rs.5,000.00 per month by taking him as a casual worker. A document was produced that the deceased had done Advance Diploma in Computer Application from Aastha Technology of Professional Life Computer Education Division, sufficient to prove that deceased was a literate man and has also received education in Computer Applications, therefore, income of the deceased is liable to be assessed accordingly.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issue No. 1 as well as quantum of compensation assessed. It is argued that though the document with regard to Diploma in Computer application by the deceased is available on record but the same has not been proved in accordance with law nor it bears any mark/exhibit.

I have heard counsel for the parties, perused the paper book and records.

The Tribunal has attributed 20% negligence to the deceased merely on account of Ashok Kumar (PW2) having admitted that present is a case of head on collision between two vehicles. The mere fact that the vehicles involved in the occurrence had head on collision is not sufficient to attribute negligence to the victim. There is nothing on record suggestive of the fact that the accident took place in the middle of road in order to say that the deceased diverted himself from his side and, therefore, he is to be blamed. In this view of the matter, findings recorded by the Tribunal attributing 20% negligence to the deceased cannot be allowed to sustain and accordingly set aside. As a consequence, issue No. 1 is answered in favour of the claimants and against the respondents before the Tribunal.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has assessed income of the deceased at Rs.5,000.00 per month. Even daily wage of an unskilled worker at the relevant time was approximately Rs.5,600.00 per month. The claimants placed on record a certificate qua Advanced Diploma in Computer Application by Amit Kumar son of Shri Dharam Singh in September 2010. Of course, this document has not been proved by a witness. The proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be applied. The Tribunal has an obligation to assess just and reasonable compensation to make good the loss the victim family has suffered. The Tribunal could call upon the claimants to prove the document but could not simply ignore the same while assessing income of deceased. Taking into consideration minimum wage available at the relevant time coupled with that the deceased was diploma holder in Computer Applications, interest of justice would be served if income of the deceased is assessed at Rs.7,500.00 per month. The claimants shall be entitled to addition in income for future prospects at the rate of 40%. Deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this view of the matter, loss of dependency is calculated at Rs.15,12,000.00 (Rs.16,20,000.00 i.e. Rs.7,500 x 12 x 18 + Rs.6,48,000.00 (40% future prospects) – Rs.7,56,000.00 (1/3rd deduction)

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 is Rs.15,82,000.00 (Rs.15,12,000.00 + Rs.70,000.00) and the additional of amount Rs.9,78,000.00 (Rs.15,82,000.00 – Rs.6,04,000.00) shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization, to be shared by the mother and widow of the deceased in the ratio 80:20. The claimants shall be entitled to entire compensation assessed in regard to death of Amit Kumar.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

22.05.2018
mohan bimbra

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