IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

-.-

FAO 5597 of 2016 (O&M)
Date of decision: 31.08.2018

Suman and others .... *Appellants*

Versus

Vipul and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

-.-

Present: Mr. Abhimanyu Batra, Advocate
for the appellants

Mr. Paul S Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the insurance company

-.-

Rekha Mittal, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Shamsher Singh in a motor vehicular accident that took place on 12.04.2014.

The Tribunal has awarded compensation of Rs.13,49,880.00, detailed hereunder:-

Monthly income of the deceased	Rs.10,000.00
Deduction for personal expenses	1/3rd
Multiplier	15
Loss of dependency	Rs.11,99,880.00
Loss of consortium and love and affection to claimant No. 1	Rs.1,00,000.00
Loss of care and guidance for claimants No. 2 and 3	Rs.25,000.00
Funeral expenses	Rs.25,000.00

Counsel for the appellants would urge that the deceased was an agriculturist and doing business of cattle feed on commission basis, thereby earning Rs.15,000.00 per month. Both the children of deceased were studying in reputed schools, sufficient to indicate that income of the deceased was quite good. The claimants have placed on record a copy of statement of account maintained by the deceased with Oriental Bank of Commerce, Dhatrath, Jind (Haryana) which records number of credit entries varying from Rs.1,00,000.00 to Rs.5,00,000.00 on different dates with effect from 2010 onwards.

Another submission made by counsel is that claimants are entitled to benefit of addition in income qua future prospects and deduction for personal expenses may be applied to the tune of $1/4^{th}$.

Counsel representing the insurance company has supported assessment of income by the Tribunal but would pray that compensation allowed under conventional heads may be restricted to Rs.70,000.00 in the light of latest judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270.***

The plea of the claimants is that the deceased was an agriculturist and carrying business of sale of cattle feed on commission basis. They have not produced any document with the regard to the deceased being owner or in possession of agricultural land. They have not examined any witness to prove purchase or sale of cattle feed. No doubt, there are credit entries in the Bank account aforesaid, but in absence of evidence qua source of the money, it is difficult to assess income on the basis of bank statement. In the given scenario, income of the deceased assessed by the Tribunal which is more than the minimum wage available at the relevant time, is affirmed. However, claimants shall be entitled to benefit of future prospects at the rate of 25%. The application for compensation has been filed by the widow, two minor children and mother of the deceased, therefore, admissible deduction for personal expenses would be 1/4th. Multiplier adopted by the Tribunal is correct and affirmed. In view of the above, loss of dependency comes to Rs.16,87,500.00 (Rs.18,00,000.00 i.e. Rs.10,000.00 x 12 x 15 + Rs.4,50,000.00 (25% addition) – Rs.5,62,500.00 (1/4th deduction))

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that 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.17,57,500.00 and additional amount is Rs.4,07,620.00 (Rs.17,57,500.00 - Rs.13,49,880.00) payable with interest at the rate of 7.5% per annum, to be shared by claimants 1 to 3 in the ratio 30:35:35. The amount falling to share of minors shall be invested in Fixed Deposit till they attain the age of majority or for a period of three years, whichever is later. However, interest accruing on FDRs shall be payable to their mother for meeting their expenses.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

31.08.2018
mohan bimbra

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