IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-703-2015 (O&M)
Date of decision: 17.09.2018

PRIYANKA & ORS ... Appellants

Versus

AVINASH DODA & ANR ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sandeep K. Yadav, Advocate
for the appellants.

Mr. Vinod Chaudhri, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Satish Kumar in a motor vehicular accident that took place on 20.07.2013.

The Tribunal has awarded compensation of Rs.31,61,500/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.22,915/-
2. Multiplier	17
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.31,16,440.68
5. Expenses on transportation and last rites	Rs.20,000/-
6. Loss of consortium	Rs.25,000/-

The liability to pay compensation has been fastened against the owner of bolero bearing No.PB-05T-9304, in view of findings of the Tribunal on issue No.3 pertaining to driving licence.

Counsel for the claimants prays for enhancement of compensation by allowing benefit of addition in income for future prospects and adequate compensation under conventional heads. He has strenuously argued that findings of the Tribunal on issue No.3 exonerating the insurance company of liability to pay compensation to the claimants cannot be allowed to sustain and liable to be modified. In support of his contention, he has relied upon latest judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425.**

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal both in regard to assessment of compensation as well as exoneration of the insurance company as the insured is guilty of violating the terms and conditions of insurance policy. In addition, it is argued that liability to pay income tax may be deducted while calculating annual loss of dependency.

Before adverting to the submissions with regard to quantum of compensation assessed by the Tribunal, it is appropriate to deal with the findings on issue No.3. The Tribunal has noticed that driving licence possessed by driver of the offending vehicle has not been produced on record for necessary verification by the insurance company. Even if the insured has failed to produce driving licence, if any possessed by driver of the offending vehicle, insurance company cannot escape liability to pay compensation to the claimants even though it may be entitle to press for right of recovery against the insured after discharging its liability towards the claimants. In this context, reference can be made to judgment of Hon'ble the Supreme Court in **Pappu and others's case (supra)** relied upon by counsel for the claimants. That being so, findings of the Tribunal on issue No.3 are modified to the effect that the insurance company shall be liable to pay compensation to the claimants but would be entitle to right of recovery against the insured after satisfying the claim of the victims.

This brings the Court to quantum of compensation assessed by the Tribunal. The deceased was an employee of Indian Army. His gross salary was Rs.22,915/- and annual salary Rs.2,74,980/-. After deducting income tax (Rs.7498/-), annual loss of dependency is calculated at Rs.2,67,482/-. Deduction for personal expenses and multiplier adopted by the Tribunal are correct and affirmed. However, claimants shall be entitled to addition in income for future prospects @50%. In this manner, loss of dependency is calculated at Rs.45,47,194/- [(Rs.2,67,482 x 17) + (50% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.46,17,194/- and the additional amount is Rs.14,55,694/- (46,17,194 - 31,61,500), payable with interest @7.5% per annum from the date of petition till realization, to children of the deceased in equal ratio, to be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later. The liability to pay compensation of the owner and insurer of the vehicle shall be joint and several but subject to the condition that the insurance company shall be entitle to recover the amount of compensation from the insured after payment to the claimants.

The appeal is disposed of in the aforesaid terms.

17.09.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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