IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.8639 of 2014 (O&M)

Date of decision: 23.02.2018

Bhikhari Ram and another ... Appellants

Versus

Devender Kumar and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Naveen S. Panwar, Advocate
for the appellants.

Mr. Suvir Dewan, 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 Virender Kumar in a motor vehicular accident that took place on 10.11.2012.

The Tribunal has awarded compensation of Rs.4,93,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6000/-
2. Deduction for personal expenses	50%
3. Multiplier	13
4. Loss of dependency	Rs.4,68,000/-
5. Funeral expenses	Rs.25,000/-

Counsel for the appellants would assert plea of the claimants for enhancement on few counts. It is argued that salary of the deceased is assessed on lower side and needs to be determined on the basis of statement of Surender Kumar PW3. Claimants are entitled to benefit of increase in income for future prospects and appropriate multiplier on the basis of age of the deceased who was 19 years old. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the other hand, would urge that income of the deceased assessed by the Tribunal is more than minimum wage fixed by the State of Haryana and available at the relevant time. In addition, it is argued that testimony of Surender Kumar PW3 with regard to employment and income of the deceased does not find corroboration from documentary evidence. The Tribunal has rightly applied multiplier of 13 on the basis of age of father of the deceased.

The plea of the claimants is that deceased Virender Kumar was doing the job in M/s Jai Mata Di Termix at salary of Rs.9000/- per month. Surender Kumar PW3, proprietor of the aforesaid firm was examined to substantiate plea of the claimants with regard to job and salary of the deceased. However, testimony of Surender Kumar with regard to deceased having remained working with his firm does not find corroboration from documentary evidence. This apart, deceased was 19 years old at the time of occurrence, therefore, it is difficult to accept that he was working for the past two years with the aforesaid firm. Under the circumstances, Tribunal has rightly refused to rely on testimony of Surender Kumar PW3 for determining income of the deceased. It has come on record that the deceased was 8th standard pass. Taking a clue from the minimum wage coupled with educational qualification of the deceased, income of the deceased assessed by the Tribunal cannot be faulted with.

Claimants are the unfortunate parents of deceased Virender Kumar. The Tribunal has rightly applied deduction of 50% for personal expenses as per ratio of judgment **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**. However, the Tribunal has seriously erred by applying multiplier of 13 on the basis of age of father of the deceased in place of multiplier of 18 on the basis of age of the deceased being in the age bracket of 16 to 25 years. In this context, reference can be made to judgments of Hon'ble the Supreme Court **Sarla Verma's case** (supra), **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315** and **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.** Claimants shall be entitled to addition in income for future prospects @ 40%. In this manner, loss of dependency comes to Rs.9,07,200/- (Rs.6000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses).

Compensation awarded under conventional heads is modified to the effect that claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

Total compensation is Rs.9,37,200/- and the additional amount is Rs.4,44,200/- (9,37,200 – 4,93,000), payable with interest @ 7.5% per annum from the date of petition till realization to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

23.02.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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