IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:23.01.2018
(1) FAO-795-2015 (O&M)
Shobha Pal and others **...Appellants**

V/s.

Ganga Ram and others **...Respondents**

AND

(2) FAO-8308-2015 (O&M)
Raja Ram Pal and another **...Appellants**

V/s.

Ganga Ram and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Neeraj Khanna, Advocate for the appellants.

Mr. Sandeep Jasuja, Advocate for respondents No. 1 and 2.

Mr. Aman Dhir, Advocate for the insurance company.

AMIT RAWAL, J. (Oral).

CM No. 2131-CII of 2015

This is an application for condonation of delay of 8 days in refiling the appeal.

For the reasons stated in the application, delay of 8 days in refiling the appeal is condoned.

CM No. 2132-CII of 2015

This is an application for condonation of delay of 40 days in filing the appeal.

For the reasons stated in the application, delay of 40 days in filing the appeal is condoned.

FAO Nos. 795 and 8308 of 2015

The appellants are the widow, daughter, father and mother of the deceased Suresh Kumar who unfortunately at the age of 30 while working as Engineer met with an accident on 05.09.2013.

Learned counsel for the appellants has confined his arguments with regard to enhancement of compensation on the premise that there is a direct and cogent evidence with regard to the income of the deceased. Through the testimony of M.K. Chauhan, Manager Personal Head, Auto Ignition Limited (PW-1), salary slips Ex. P2 to P10 from January 2013 to September 2013 have also been proved on record whereby the per month salary of the deceased was Rs.18,248/- but the learned MACT while returning the findings in para No. 27 deducted the other allowances and had taken the income of the deceased as Rs.12,800/- p.m. The accident in this case is not controverted. The deceased had left behind widow, minor child and parents whereas the father is aged 60 years and therefore deduction should have been $1/4^{th}$ instead of $1/3^{rd}$ and multiplier should have been 17 instead of 16. Whereas the amount of Rs.1,25, 000/- awarded on account of loss of consortium and funeral expenses are liable to be reduced to Rs.70,000/-. On the contrary, learned counsel appearing for the insurance company submitted that the findings do not call for interference.

I have heard learned counsel for the parties and perused the paper book. The findings rendered by MACT in para 26 and para 27 of the paper book read as under:-

> "26. I have duly considered the aforesaid contentions. As per the case of the claimants, the deceased was working as a senior engineer with M/s Auto Ignition Limited and was getting salary of Rs.25,000/- per month. To establish this plea, the claimants have examined M.K. Chauhan, Manager Personnel Head, Auto Ignition Limited as PW1. He has

deposed that deceased was working in their company as senior engineer and proved his appointment letter Ex.P1, salary slips w.e.f. January, 2013 to September, 2013 Ex. P2 to Ex.P10 and deposed that gross salary of deceased in the month of September, 2013 was Rs.18,248/-. He has also proved the attendance record of the deceased. Thus, from the statement of PW 1 M.K.Chauhan, it is proved on record that deceased was working as senior engineer with M/s. Auto Ignition Limited and was getting salary of Rs.18,248/- per month.

27. I found substance in the contentions raised by learned counsel for the respondents that personal allowance of the deceased are to be deducted from the gross salary of the deceased. In case **Harbhajan Kaur and others Versus State of Haryana and others 2008(3) SLJ 1763**, our Hon'ble High Court has laid down that personal allowances i.e. Tea/Coffee allowance, washing allowance, rationalization allowance, lunch allowance, professional allowance, conveyance allowance and LTC allowance are personal allowances of the deceased. These type of allowances cannot be added to the income of the deceased. LTA, medical allowance, uniform allowance and transportation allowance are the personal allowances of the deceased which were not for the benefit of the entire family as these personal allowances were spent by the deceased on himself. So, these allowances are to be excluded from the salary of the deceased. Thus, after excluding personal allowances, the net income of the deceased remains Rs.12,773/- to make it a round figure, we can take Rs.12,800/- per month. The date of birth of the deceased is 3.5.1983 as per matriculation certificate Ex.P29 and this accident had taken place on 5.9.2013. Thus, the deceased was 30 years and four months of age at the time of his death. So, 50% of his income is to be added towards the future prospects as per law laid down by the Hon'ble Apex Court in case **Rajesh and others Vs. Rajbir Singh and others 2013(3) RCR (Civil) 170**. So, the income of the deceased after addition of the future prospects

comes to Rs.19,200/- (12,800 + 6,400) i.e. Rs. 2,30,400/- per annum."

In view of the judgment of the constitution bench of Supreme Court in case of **Manasvi Jain V/s. Delhi Transport Corporation, 2014(3) R.C.R. (Civil) 313**, other allowances should not be deducted in case of a married person.

Accordingly, I reassess the compensation by taking the income of the deceased as ₹18,000/- per month instead of ₹12,800/- and provide 40% increase towards future prospects and apply a multiplier of '17', much less, deduction of 1/4th instead of 1/3rd to assess the loss of dependency as ₹38,55,600/-.

As regards the grant of compensation towards conventional heads, the Tribunal has already granted ₹1,00,000/- towards loss of consortium and an amount of ₹25,000/- on account of funeral expenses, which are on higher side. I hereby reduce the same from ₹1,25,000/- to ₹70,000/- towards conventional heads i.e. loss of estate, loss of consortium and funeral expenses as per the latest judgment dated 31.10.2017 rendered by Hon'ble the Supreme Court in ***SLP (Civil) No. 25590 of 2014*** titled as ***"National Insurance Company Ltd. V/s. Pranay Sethi and others"*** and by exercising the power under Order 41 Rule 33 CPC as per the ratio decidendi culled out by the Hon'ble Supreme Court in ***"U.P.S.R.T.C V/s Km. Mamta and others" (2016) 4 SCC 172.***

In all the compensation payable shall be ₹39,25,600/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the appeal till its realization. The liability shall remain the same as has already been determined by the Tribunal.

The proportionate share as determined by the MACT shall remain the same.

Both the appeals stand allowed.

January 23, 2018 **(AMIT RAWAL)**
Divyanshi **JUDGE**

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