IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.935 of 2015(O&M)
Date of Decision: 05.04.2018

Yadwinder Singh & ors. ... Appellants

Versus

Jasvinder Singh & ors. .. Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Naveen Upadhyay, Advocate,
for the appellant.

Mr. Ram Avtar, Advocate,
for respondent No.4.

RAMENDRA JAIN, J.(Oral)

Claimants through this appeal have sought enhancement of compensation by modifying impugned award dated 08.07.2014 of the Motor Accident claims Tribunal, Ludhiana (in short 'the Tribunal').

Briefly stated, on 29.06.2011, Kamaljit Kaur while travelling on a scooter of her husband appellant-claimant No.1 as a pillion rider, when reached near Transport Nagar area, a bus owned by respondent No.3, driven by respondent No.1, came from behind in a rash and negligent manner and struck against their scooter. As a result thereof, Kamaljit Kaur fell down on the road and succumbed to her injuries.

In claim petition under Section 166 of the Motor Vehicles Act, 1988, filed by the appellants, the learned Tribunal awarded compensation of ₹13,18,552/- along with interest @ 6% per annum to them, from the date of filing of claim petition till actual realization vide impugned award.

Learned counsel for the appellants *inter alia* contends that the learned Tribunal has wrongly taken date of birth of deceased on the basis of voter identity card (Ex. CW4/3) as 46 ½ years at the time of her death, ignoring her date of birth mentioned in PAN Card (Ex. C-7). The learned Tribunal has erred in not taking the income of the deceased at the time of her death at ₹15,000/- per month and taking the same on the basis of average of four income tax returns, ignoring her last income tax return, whereby her annual income was ₹1,24,000/-. Learned Tribunal has failed to appreciate that with the passage of time in future income of the deceased must have increased. Her income ought to have been taken by the Tribunal at ₹15,000/- per month. In support of his arguments, he has relied upon a judgment of the Hon'ble Supreme Court in <u>Shashikala and others Vs. Gangalakshmamma and another</u>, 2015(9) SCC 150.

On the other hand, learned counsel for the respondent-Insurance Company strongly refuting aforesaid submission of learned counsel for the appellant submits that the learned Tribunal has already awarded excess compensation to the appellants inasmuch as in view of the latest judgment of the Hon'ble Apex Court in <u>National Insurance Company Ltd. Vs. Pranay Sethi & ors.</u>, 2017(4) RCR (Civil) 1009, the compensation payable to the appellants comes to ₹12,83,350/-.

Having given anxious consideration to the submission made by both the sides, I find that the instant appeal is completely meritless for the reasons to follow.

Voter identity car (Ex.CW4/3) of the deceased is own document of the appellants and was produced by them on record. According to the same, age of the deceased as 46½ years at the time of her death has rightly been considered by the learned Tribunal ignoring the date of birth of the deceased mentioned in her PAN Card (Ex.C-7) in view of the fact that the appellants did not produce birth certificate of the deceased or her matriculation certificate showing her exact date of birth. Since both the above documents were produced by the appellants, therefore, it was their bounden duty to produce some authentic evidence or birth certificate of the deceased to resolve the controversy about the age of the deceased, which they themselves had created. The appellants were also required to prove as to on what basis date of birth of the deceased was shown in the PAN Card. The appellants cannot be permitted to wriggle out from their own document or disown it i.e. Voter identity card.

In the above circumstances, this Court is not inclined to differ with the age taken by the learned Tribunal for arriving at just compensation payable to the appellants.

Undisputedly, the deceased was self-employed. No proof regarding her alleged vocation was produced on record by the appellants. No customer list or record regarding purchase of material to run alleged boutique by the deceased was produced. There was no rent deed or lease deed or any other document before the learned Tribunal below to show that the deceased, in fact, was running any boutique. Therefore, in the absence of any such evidence, pleadings to this effect of the appellants in their claim petition could not have been considered as a proof. The appellants simply placed reliance upon four income tax returns of the deceased. There was no evidence before the learned Tribunal that the alleged business being run by the deceased was of such a nature, which would have increased in future.

As far as the income tax returns are concerned, it is an open secret that people generally file returns every year showing some little income beyond the exemption limit to create entry in their favour by paying a very petty or meagre amount towards income tax. In the absence of any proof regarding alleged vocation of the deceased, this case seems to be of the above kind.

Even if, monthly income of the deceased is calculated on the basis of alleged last income tax return, according to learned counsel for the appellants, the same comes to ₹10,333/- per month. Whereas the learned Tribunal taking the average of all the returns has taken monthly income of the deceased as ₹ 9,333/-. There is not much difference in the income of the deceased shown in her last income tax return and as taken by the learned Tribunal. Therefore, in the absence of any evidence about the alleged business of the deceased, this Court is not inclined to differ with the income of the deceased taken by the learned Tribunal.

According to *Pranay Sethi's case (supra)*, the appellants are entitled for addition of 30% to the income of the deceased towards future prospects. Taking into account, monthly income of the deceased considered by learned Tribunal at ₹ 9,333/-and adding 30% to the same towards future prospects, and making 1/3rd deduction towards the personal expenses of the deceased after applying multiplier of thirteen, the compensation comes to ₹12,13,350/-. Further ₹30,000/- is to be added in the same under conventional heads of loss of estate and funeral expenses. On adding the same, compensation comes to ₹12,43,350/-, whereas learned Tribunal has already awarded compensation of ₹13,18,552/- .

I have no dispute with the judgment relied upon by learned counsel for the appellant, but with due respect, I would like to add here that the same is not applicable in view of the fact that every case has its own peculiar facts and circumstances. Therefore, awarding compensation in one case on the basis of facts of some other case does not appeal to reason. Any judgment can only be a guiding and not a binding factor, unless and until the facts and circumstances of both the cases are akin to each other. In that case, the deceased was running a transport business, whereas in the instant case, the appellants have not produced any proof regarding alleged running of boutique by the deceased. That apart, in that case, some evidence had come on record that the deceased besides having income from his transport business was owing some agricultural land, whereas there are no such circumstances. So under these facts and circumstances, no benefit of Shashikala's case (supra) can be given to the appellants.

In view of the discussion made above, this appeal fails and is dismissed.

05.04.2018 **(RAMENDRA JAIN)**
monika **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*