IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2969 of 2017 (O&M)
Date of decision:16.10.2018.

Sham Kaur

...Appellant

Versus

Sarbjit Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mrs. Ekta Thakur, Advocate for the appellant.

Mr. Vipul Sharma, Advocate for respondent No.2/Insurance Company.

LISA GILL, J.

This appeal has been filed by the claimant seeking enhancement of the compensation awarded to her by the learned Motor Accident Claims Tribunal, Mohali (`Tribunal' for short) vide award dated 10.11.2016 on account of death of Bhalendra Singh in a motor vehicle accident on 21.11.2014. Petition under Section 166 of the Motor Vehicles Act (for short `the Act') was filed by the appellant along with the four daughters (married) of the present appellant and the deceased. Present appeal has however been preferred by the claimant widow only.

The claimants before the learned Tribunal i.e. the wife and married daughters of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Bhalendra Singh due to injuries received by him in a motor vehicle accident which took place on 21.11.2014. FIR No.6 dated 09.01.2015 was registered under Sections 279 and 337 IPC against respondent No.1. It was pleaded that the deceased at the time of his death was getting monthly pension of Rs.31,574/-

being a retiree from Guru Gobind Singh Super Thermal Plant, Ropar. He was 68 years old at the time of accident. Compensation was, thus, prayed for.

The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality.

Learned Tribunal held the deceased to be 68 years old at the time of his death and assessed his income as Rs.31,574/- per month. Deduction of 50% was effected towards the personal expenses. After applying a multiplier of 5, total dependency was assessed at Rs.9,47,220/-. Another sum of Rs.25000/- was awarded towards funeral expenses besides Rs.1,00,000/- towards loss of consortium. A sum of Rs.8,01,000/- was awarded towards expenses incurred on the treatment of the deceased. Thus, claimants were held entitled for total compensation of Rs.18,73,220/- along with interest @ 6% per annum from the date of filing of claim petition till realisation.

Learned counsel for the appellants, while relying upon the judgment of Hon'ble Supreme Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, *2009(3) RCR (Civil) 77* submits that deduction of 50% should not have been effected by the learned Tribunal as the deceased was not a bachelor. The widow was totally dependent upon the deceased though daughters of the deceased were married. Therefore, deduction of 1/3rd should be effected. It is further submitted that the claimants successfully proved on record the medical bills amounting to Rs.9,27,918/-. However, a sum of only Rs.8,01,000/- was awarded by the learned Tribunal. It is submitted that a sum of Rs.40,000/- on account of loss of consortium instead of Rs.1,00,000/- may be afforded to appellant No.1. Learned counsel further submits that compensation awarded to the claimants be reworked in terms of the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018.

Learned counsel for the Insurance Company, however, submits that there is no scope for further enhancement of the compensation awarded. However, he is unable to deny that that the claimants had successfully proved bills amounting to Rs.9,27,918/- on account of medical expenses incurred. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in New India Insurance Company Ltd. Vs. Vinish Jain and others, 2018 (1) PLR 759 to submit that as the deceased was 68 years old and it is only appellant No.1 who was dependent upon him, deduction of 50% should be maintained.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Deduction of 50% effected by the learned Tribunal is indeed, unjustified. There is no merit in the contention raised by learned counsel for the Insurance Company as admittedly in the judgment of the Hon'ble Supreme Court in the case of Vinish Jain and others (supra), the claimants were two major sons and two granddaughters, thus it was directed that 50% deduction should be effected. Deduction of 1/3rd was considered to be on the lower side. In the present case, appellant is admittedly the widow of the deceased. They have four daughters who are married. It cannot be ignored that in our social set-up and the societal norms, the deceased must necessarily be spending some amount on them. Therefore, it is considered just and appropriate to effect a deduction of 1/3rd in the peculiar facts and circumstances of the case. Multiplier of 5 has rightly been applied. Learned counsel for the Insurance Company is unable to deny that a sum of Rs.9,27,918/- has been proved on record. Therefore, the said amount of Rs.9,27,918/- on account of medical expenses incurred, has to be afforded instead of Rs.8,01,000/-. In view of the judgment of the Hon'ble Supreme Court in the case of Magma General Insurance Company Ltd. (supra), the appellant-claimant No.1 is entitled to Rs.40,000/- towards spousal consortium instead of Rs.1,00,000/-. The appellant is entitled to Rs.15,000/- each for loss of estate and funeral expenses instead of Rs.25,000/- already afforded towards funeral expenses.

Claimant is, thus, entitled to compensation, which is re-worked as under:-

Sr.No.	***Heads of Claim***	
1.	Income	31,574/- p.m. i.e., 3,78,888/- per annum
2.	Income after deduction of 1/3rd on account of personal expenses	3,78,888–1,26,296 (3,78,888/3) = 2,52,592/-
3.	Total dependency after applying a multiplier of 5	(2,52,592 **x**5) =12,62,960/-
4.	Loss of estate	15,000/-
5.	Loss of funeral	15,000/-
6.	Loss of consortium	40,000/-
7.	Medical expenses	9,27,918/-
Grand Total		22,60,878

The amount of compensation already awarded to the claimants, needless to say, shall stand deducted from the amount calculated as above. claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 10.11.2016, present appeal is disposed of.

(LISA GILL)
JUDGE

October 16, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No