IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4065 of 2011 (O&M)
Date of decision : September 12, 2018

Smt. Nirmla Devi and others .....Appellants

Versus

Sukhdev Singh and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rakesh Nagpal, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate for
Ms. Monika Jangra, Advocate
for respondent No. 3.

***

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as the 'Tribunal') on account of death of Ashok Kumar vide award dated 20.04.2011.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, children and parents of the deceased filed petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Ashok Kumar in a motor vehicle accident caused due to driving of the offending vehicle motor cycle bearing registration No. HR-07G-4433 by respondent No.1 in a rash and negligent manner. It was averred that on 16.10.2009 Ashok Kumar was on the left hand side on Ismailabad-Ambala road near village Thol. Motor cycle bearing registration No. HR-07G-4433 driven by respondent No.1 in a rash and negligent manner came from the wrong side of the road from Ambala and hit Ashok Kumar. He fell down on the road and received multiple injuries. Ashok Kumar succumbed to his injuries on 24.10.2009 at Gian Sagar Medical College and Hospital, Banur, District Patiala. The deceased was stated to be 47 years of age at the time of the accident, earning ₹2,00,000/- per annum from the business of readymade garments and transport. Compensation was claimed.

Claim petition was resisted by the respondents. Following issues were framed by the learned Tribunal:-

1. Whether Ashok Kumar son of Lachman Dass had died on account of the injuries sustained by him in a road side vehicular accident which had occurred on 16.10.2009 in the area of police Station, Ismailabad on account of rash and negligent driving of the motor cycle No. HR-07G-4433 by respondent No. 1 ? OPP
2. Whether the claimants are entitled to be compensated for the death of Ashok Kumar having occurred in the above accident, if so to what extent and by whom? OPP.
3. Whether respondent No. 1 was driving the above motor cycle in violation of the terms of the insurance policy as pleaded by respondent No. 3, if so to what effect? OPR-2
4. Relief.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 16.10.2009 due to rash and negligent driving of the offending motor cycle bearing registration No. HR-07G-4433 by respondent No. 1. Learned Tribunal awarded a sum of ₹9,63,250/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹1,03,000/- per annum. Deduction of 1/4th was effected, keeping in view the number of dependents. Multiplier of 11 was applied as the age of the deceased was taken to be between 50 to 55 years at the time of the accident. Sum of ₹20,000/- was awarded on account of loss of consortium, loss of estate and funeral expenses. Sum of ₹93,500/- was awarded for treatment of the deceased prior to his death.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that there is no dispute regarding the income of the deceased assessed as ₹1,03,000/- per annum by the learned Tribunal. It is submitted that in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, loss of future prospects at the rate of 10% should be afforded. Learned counsel fairly states that compensation on account of loss of consortium, funeral expenses are required to be reworked while deduction of 1/4th should be effected. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company while refuting the arguments raised submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. Thus, impugned award dated 20.04.2011 be upheld.

Heard learned counsel for the parties.

There is no dispute that Ashok Kumar lost his life in a motor vehicle accident, which took place on 16.10.2009 caused due to the rash and negligent driving of motor cycle bearing registration No. HR-07G-4433 driven by respondent No.1. Finding of the learned Tribunal on this issue has attained finality.

There is no dispute regarding the income of the deceased to be

₹1,03,000/- per annum as assessed by the learned Tribunal. Age of the deceased is assessed as 50 years in view of the year of birth of the deceased being mentioned as January, 1959 in the Income Tax Return (Ex.P17). In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 10% (₹10,300/-) is afforded in view of the age of the deceased (50 years), which takes the income of the deceased to ₹1,13,300/- per annum. In view of law laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, deduction of 1/4th is to be applied as number of dependents is six (6), thereby rendering income of the deceased to be ₹84,975/-(₹1,13,300-28,325) per annum. Multiplier of 11 instead of 13 should have been applied in view of guidelines laid down by the Hon'ble Supreme Court in ***Smt. Sarla Verma***'s case (supra). Applying a multiplier of 11, dependancy of the claimants is, therefore, assessed as ₹9,34,725/- (₹84,975x11). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow being entitled to ₹40,000/- on account of loss of consortium. Claimants are, thus, entitled to total compensation of ₹10,04,725/- detailed as under:-

Loss of dependency(₹84,975x11)	₹9,34,725/-
Loss of consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	**₹10,04,725/-**

The amount of compensation already awarded to the appellant, needless to say, shall stand deducted from the amount calculated as above. Appellants 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.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(Lisa Gill)
Judge

September 12, 2018
rts

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