IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.8399 of 2017 (O&M)
Date of decision:25.09.2018.

Nirmala and others

...Appellants

Versus

Sushil Kumar and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Jitender Nara, Advocate for the appellants.

Mr. Rajbir Singh, Advocate for respondent No.2.

LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of the compensation awarded to her by Motor Accident Claims Tribunal, Rewari (`Tribunal' for short) vide award dated 10.08.2017 on account of death of Jaswant in a motor vehicle accident on 17.09.2016.

The claimants, who are the wife and children of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Jaswant in a motor vehicle accident which took place on 17.09.2016. FIR No.198 dated 17.09.2016 was registered under Sections 279 and 304-A IPC at Police Station Rampura. It was pleaded that the deceased at the time of his death was an agriculturist and besides this he was running a dairy farming. His monthly income was stated to be Rs.25,000/-. He was aged about 44-45 years 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 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 further assessed the age of the deceased to be less than 50 years at the time of his death. The learned Tribunal assessed the income of the deceased as Rs.9000/- per month. 30% increment in income was afforded on account of future prospects. Thus, the total income of the deceased was assessed as Rs.11,700/- per month. Deduction of 1/3rd was effected towards the personal expenses. After applying a multiplier of 13, total dependency was assessed at Rs.12,16,800/-. Another sum of Rs.1,00,000/- was afforded towards loss of consortium. A sum of Rs.25000/- was awarded towards last rites and funeral expenses. Besides an amount of Rs.11,223/- was afforded towards medical expenses. Thus, claimants were held entitled for total compensation of Rs.13,53,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till realisation.

Learned counsel for the appellants contends that deduction of 1/4th should have been applied instead of 1/3rd as the number of claimants/dependants are four. It is submitted that claimant has no objection in case amount of compensation under the conventional heads is reduced from Rs.1,25,000/- to Rs.70,000/- and increment on account of future prospects be reduced to 25% in terms of the judgment of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009. It is thus prayed that this appeal be allowed and compensation awarded be enhanced.

Learned counsel for the Insurance Company has refuted the above said arguments while submitting that the impugned award has correctly been passed and no ground for any enhancement is made out.

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

An attempt has been made to argue that income of the deceased was more than Rs.9000/-. Deceased was claimed to be an agriculturist as well as running a dairy farming, earning Rs.20,000/- to 25,000/-. PW4 Gaje Singh, Nambardar of the village, was examined to prove that the deceased was running a dairy farming. However, there is no documentary evidence to show that deceased was earning Rs.25,000/- by running a dairy farming as claimed. Being an agriculturist, it is a settled position that income of the deceased has to be calculated with regard to loss of managerial skill. In this situation, learned Tribunal has rightly assessed the income of the deceased as Rs.9000/-. In respect to the age of the deceased, it is noticed that the claimant did not dispute the authenticity of the voter list (Mark `A') presented by the respondent/Insurance Company wherein age of the deceased was mentioned as 50 years. Therefore, in view of <u>National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009</u>, increase of 25% in income has to be afforded to the claimant. Multiplier of 13 has rightly been applied. Deduction of $1/4^{th}$ instead of $1/3^{rd}$ has to be effected towards personal expenses keeping in view the number of claimants/dependents in view of the judgment of the Hon'ble Supreme Court in <u>Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, *2009(3) RCR (Civil) 77*</u>. The claimants are entitled to Rs.15,000/- each for loss of estate and funeral expenses instead of Rs.25,000/- towards funeral expenses, besides

Rs.40,000/- instead of Rs.1,00,000/- to the claimant widow for loss of consortium.

Appellants-claimants are, thus, entitled to compensation, which is re-worked as under:-

Sr.No.	***Heads of Claim***	
1.	Income	9000 p.m. i.e., 1,08,000/- per annum
2.	Total income after addition at the rate of 25% on account of future prospects	1,08,000+27,000 (1,08,000x25%) = 1,35,000/-
3.	Income after deduction of 1/4th on account of personal expenses	1,35,000–33,750 (1,35,000/4) = 1,01,250/-
4.	Total dependency after applying a multiplier of 13	(1,01,250 **x**13) =13,16,250/-
5.	Loss of estate	15,000/-
6.	Loss of funeral	15,000/-
7.	Loss of consortium to wife	40,000/-
8.	Medical Expenses	11,200/-
Grand Total		13,97,450/-

The amount of compensation already awarded to the appellants, 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 award dated 10.08.2017, present appeal is disposed of.

(LISA GILL)
JUDGE

September 25, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No