[208] IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1761 of 2003
Date of decision: 28.03.2019

Smt. Suman Sachdeva and Others …. Appellants

Versus

Angrej Singh and Others ….. Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Navjot Kaur, Advocate for
Mr. Vishal Gupta, Advocate for the appellants.

Mr. Vipul, Advocate for
Mr. Ravinder Arora, Advocate for the Insurance Company/respondent No.3.

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B.S. Walia, J.,

[1] Appeal has been filed by the wife, then two minor daughters, one minor son and mother of Laxmi Chand Sachdeva who died in a motor vehicular accident on 05.01.1999. Prayer is for enhancement of compensation of ₹ 7,25,000/- awarded by the learned Motor Accident's Claims Tribunal, Jagadhari (hereinafter referred to as 'the Tribunal') along with ₹ 1,000/- as counsel fee.

[2] Learned counsel for the appellants contended that the appeal is liable to be allowed, award modified and compensation payable enhanced by taking into account age of the deceased as 39 years, multiplier of 15, by taking 40% of the established income of the deceased into account for award of future prospects besides by awarding ₹ 15,000/- on account of funeral expenses, ₹ 15,000/- on account of loss of estate and ₹ 40,000/- on account

of loss of consortium as also interest @ 9% per annum w.e.f. the date of claim petition till date of payment.

[3] The appellants exhibited income-tax return's filed by the deceased for the year 1996-97 as (Ex.P31), for the year 1997-98 as (Ex.P32), for the year 1998-99 as(Ex.P33) and for the year 1999-2000 as (Ex.P-20). As per aforesaid IT returns, income of the deceased was ₹51,860/-, ₹55,550/-, ₹93,880/- and ₹ 1,14,711/- respectively. However, the learned Tribunal ignored income tax return Ex.P20 for the year 1999-2000 on the ground that the same had been filed after the death of Laxmi Chand Sachdeva, consequently, there was every likelihood of income of the deceased having been exaggerated to claim more compensation. However, the last return filed by the deceased himself i.e. Ex.P-33 for the year 1998-99 was taken into account. Accordingly, income of the deceased reflected therein i.e. ₹ 93,880/- rounded off to ₹ 94,000/- per annum was taken into account for determining compensation payable. Age of the deceased was taken as 49 years while deduction @ $1/3^{rd}$ of income of the deceased was made towards his personal expenses as well as for payment of income tax. According, dependency of the claimants upon the deceased was assessed at ₹ 55,000/- per annum. Thereafter by applying multiplier of 13 and by awarding ₹ 5000/- on account of funeral expenses and ₹ 5,000/- on account of loss of consortium, the appellants/claimants were held entitled to award of compensation of ₹ 7,25,000/- with respondent No. 3 i.e. the Insurance Company being held liable to pay compensation to the claimants with liberty to recover the same from respondent No. 2, i.e. owner of the offending vehicle. It was further ordered that on realization of the amount of share of the major claimants, the same be deposited in a nationalized Bank for a period of one year and be released only after expiry of said period whereas

compensation awarded to the minor claimants, was ordered to be deposited in a nationalized bank till such time that they attained majority. However, it was ordered that in case of need, the appellants could apply to the Court for early payment.

[4] Learned counsel for the appellants contended that age of the deceased as per income tax return (Ex.P-33) was 11.12.1959 and since the accident took place on 05.01.1999, age of the deceased worked out to 39-40 years, therefore in the circumstances, it was apparent that the finding of the learned Tribunal that the deceased was 49 years of age was factually incorrect. Secondly, as per income tax slab for the relevant year, net income after deduction of ₹ 5453/- as income tax after grant of rebate worked out to ₹ 88,547/- per annum. Learned counsel further contended that since there were five dependents, deduction of personal expenses of the deceased was required to be made @ 1/4th and not 1/3rd of the income of the deceased. Besides, in view of the age of the deceased being 39 years, multiplier of 15 and not 13 was to be applied.

[5] Learned counsel further contended that since the deceased was self-employed and less than 40 years of age, therefore, as per paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Ltd. vs Pranay Sethi and others, 2017 (4) RCR (Civil) 1009,** 40% of the established income of the deceased minus tax component was liable to be taken into account for working out future prospects while computing the compensation while as per paragraph No.61 (viii) of aforesaid decision, ₹ 15,000/- was payable on account of funeral expenses, ₹ 15,000/- on account of loss of estate, besides, ₹ 40,000/- on account of loss of consortium as against ₹ 5000/- awarded on account of funeral expenses and ₹ 5000/- on account of loss of consortium. Learned

counsel lastly contended that no amount had been awarded by way of interest, although it was settled law that on award of compensation, the appellants were entitled to award of interest. Learned counsel contended that worked out in the aforesaid manner, compensation payable worked out to ₹ 14,64615.25 whereas only ₹ 7,25,000/- was awarded by the learned Tribunal.

[6] The paper book as well as record was destroyed in a fire. Paper book has been reconstructed from the salvaged record of the partially burnt case.

[7] Learned counsel appearing for the Insurance Company/respondent No.3 fairly did not oppose the claim of the appellants for enhancement of compensation by taking into account the age of the deceased as 39 years in view of date of birth of the deceased being recorded as 11.12.1959 in the income tax return (Ex.P33), that tax deductible after rebate worked out to ₹ 5453/- consequentially, annual income of the deceased working out to ₹ 88,547/- as also that in view of five dependents, deduction towards personal expenses of the deceased was to be made @ 1/4th and not 1/3rd . Learned counsel also did not oppose the amount claimed on account of conventional heads as well as future prospects as per the decision in Pranay Sethi's case (supra).

[8] Apart from counsel for the Insurance Company, no other respondent is represented.

[9] Accordingly, with the assistance of counsel for the appellants as well as counsel for Insurance Company/respondent No.3, I have considered the claim in the light of the legal position and am of the view that in the circumstances, the appellants are entitled to award of compensation as under:-

Sr. No.	Heads	Amount assessed by the Tribunal	Amount assessed by the Court
1.	Annual income assessed on the basis of income-tax return (Ex.P-33) for the year 1998-99.	₹ 93,880/- (rounded off to ₹ 94,000/-)	₹ 94,000/-
2.	Income Tax deduction after rebate	₹ 5453/-	₹ 5453/-
3.	Net Income (per annum)	₹ 88547/-	₹ 88547/-
4.	Deduction (towards personal expenses of deceased)	1/3rd of ₹ 88547/- = ₹ 29,515.6/- (rounded off to ₹ 29,516/-)	1/4th of ₹ 88547/- = ₹ 22136.75/- (rounded off to ₹ 22137/-)
5.	Dependency (Annual)	₹ 88547/- - ₹ 29,516/- = ₹ 59,031/- (wrongly taken as ₹ 55,000/-	₹ 88547/- - ₹ 22,137/- = ₹ 66,410/-
6.	Future Prospects	Nil	40% of ₹ 66,410/- = ₹ 26,564/- [i.e. ₹ 66,410/- + ₹ 26,564/- = ₹ **92,974/-]**
7.	Multiplier	13	15
8.	Compensation awarded	₹ 55,000/- x 13 = ₹ 7,15,000/-	₹ 92,974/- x 15 = ₹ 13,94,610/-
7.	Loss of Consortium	₹ 5000/-	₹ 40,000/-
8.	Funeral Expenses	₹ 5,000/-	₹ 15,000/-
9.	Loss of Estate	Nil	₹ 15,000/-
10.	Rate of Interest	Nil	7.5% per annum
TOTAL		₹ 7,25,000/-	₹ 14,64,610/-

[10] Accordingly, as against compensation of ₹ 7,25,000/- awarded by the learned Tribunal, the appellants are held entitled to award of compensation of ₹ 14,64,610/- along with interest @ 7.5% per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier. Needless to mention, payment of compensation shall be made by respondent No.3/Insurance Company with liberty to recover the same from the owner of the offending vehicle (i.e. respondent No.2).

[11] Accordingly, the appeal is allowed. Award dated 04.02.2003 passed by the learned Tribunal, Jagadhari is modified to the extent as noted above.

(B.S. Walia)
Judge

28.03.2019
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.