206 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No.1427 of 2003 (O&M)
Date of decision:-September 17, 2019

Smt. Bina Jain and others ... Appellants

Versus

P. Antom and others ... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vikas Suri, Advocate for the appellants.

Mr. Vinod Chaudhari, Advocate for respondent No.3.

Ms. Alka Joshi, Advocate for respondent No.5.

RITU BAHRI J. (Oral)

CM-6773-CII-2003

For the reasons mentioned in the application dealy in re-filing thes present appeal is condoned, subject to all just exceptions.

Application stands disposed of.

Main case

1. The present appeal has been preferred by the claimants-appellants, seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal') to the tune of Rs.13,50,000/- vide impugned award dated 08.06.2002 on account of death of Subhodh Chand Jain, died in a road accident, which took place on 05.03.1995.

2. There is no dispute regarding the finding recorded qua the issue

No.1. This finding is given in favour of the claimants-appellants, keeping in view that FIR Ex.PF bearing No.100/95 registered under Section 304-A IPC at the instance of one Arvind Kumar Patel who is stated to be following car No.TAC-5436 against the driver of bus bearing No.KL-01-2295. The driver of the offending vehicle respondent No.1 was prosecuted for the commission of offences punishable under Sections 279, 337 and 304-A IPC and was convicted and sentenced to pay a fine of Rs.125/- and in default to suffer two weeks simple imprisonment for the offence under Section 279 IPC; to pay a fine of Rs.125/- and in default to suffer simple imprisonment for two weeks for the offence under Section 337 IPC and to pay a fine of Rs.750/- for each count, total Rs.2250/- and in default to suffer simple imprisonment for three months for each count under Section 304-A IPC (3 counts), total fine Rs.2250/-.

3. The compensation was assessed, keeping in view the fact that the deceased was attorney of two companies, namely, Brij Lal Mani Lal and Co. and Devender Trading Co. and he was income tax payee and was holding MBA degree from Oxford University. The Tribunal had taken the latest income tax retun Ex.R1 and the income was shown under the four sources:

i)	Income from salary (Salary and commission)	Rs.305461.00
ii)	Income from house property	Rs.227305.44
iii)	Income from business (received commission from Devendra Trading Co.)	Rs.140749.66
iv)	Income from other sources (consisting of interest)	Rs.187559.68

Total Rs.861075.78

4. The Tribubal, thereafter, recorded the evidence with regard to the income of claimant No.1-Bina Jain and income of claimant Nos.2 and 3 Gauravashish and Dev Ashish respectively and their pass-books Ex.PW7/1 to PW7/3 and thereafter returned the findings that the claiminsts have sufficient income of their own. The income of the deceased was taken as Class-I Officer @ Rs.15,000/- per month, 1/3 was deducted and multiplier of 11 was applied.

5. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced.

5. On the other hand, the learned counsel for the respondents-Insurance Company has vehemently opposed the present appeal.

6. I have heard learned counsel for the parties and perused the record.

7. It is not in dispute between the parties that the accident had taken place, as the accident had been duly proved by the claimants/appellants. Further the claimants-appellants are also entitled for compensation of Rs.40,000/- each under the head of loss of filial consortium, in view of judgment of Hon'ble the Supreme Court of India in a case of ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram, 2018 (4) RCR Civil 837*** .

8. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition***

(Civil) No. 25590 of 2014, decided on October 31, 2017 *wherein the* issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

> *"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs.*

15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.".

9. In the present case, the date of birth of the deceased was 04.02.1945 and the accident took place on 05.03.1995. In this way, the age of the deceased was approximately 50 years 1 month at the time of accident the compensation is being reassessed as per the judgments mentioned above:-

Sr. No.	Heads	Calculations
(i)	Income	Rs.15000/- per month
(ii)	10% of (i) above to be added as future prospects=	Rs.15000+Rs.1500=Rs.16500/- per month
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased=	Rs.16500-Rs.5500=Rs.11000/- per month
(iv)	Compensation after multiplier of 13 is applied	Rs.11000X 12 X 13= Rs.1716000/-
(v)	Conventional heads (Loss of estate and funeral expenses)	Rs.30,000/-
(vi)	Loss of filial consortium (claimants)	Rs.1,20,000/-(Rs.40,000/- each)
(vii)	Total Compensation awarded	Rs.18,66,000/-
	Enhanced amount of compensation	**Rs.18,66,000-13,50,000=Rs. 5,16,000/- (rounded off to Rs.5,16,000/-)**

10. The enhanced amount of compensation of Rs.5,16,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% in view of judgment of Hon'ble the Apex Court in Civil Appeal No. 4528-2019

titled as ***Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019***. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered. The liability is imposed upon respondent No.3.

11. Accordingly, the award stands modified to the abovenoted extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

September 17, 2019
sarita

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