In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 10.1.2019

FAO No. 1134 of 2003

Gulshan Kumar and others

---Appellants

versus

Dewa Nand Sharma alias Neeta and others

---Respondents

FAO No. 1135 of 2003

Suman Bala

---Appellant

versus

Dewa Nand Sharma alias Neeta and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. P.S.Khurana, Advocate
for the appellants

Mr. R.N.Singal, Advocate,
for the insurance company/respondent No. 3

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Rekha Mittal, J.

This order will dispose of FAO Nos. 1134 and 1135 of 2003 as these have emerged out of the same accident in which Darshan Lal and Pardeep Kumar Vasan succumbed to the injuries sustained in a motor vehicular accident that took place on 27.7.2001.

FAO No. 1134 of 2003 has been filed by Gulshan Kumar and others seeking enhancement of compensation in regard to death of Darshan Lal whereas the other appeal has been preferred by Suman Bala widow of Pardeep Kumar Vasan for the same purpose.

FAO No. 1134 of 2003

The Motor Accidents Claims Tribunal,Ludhiana (in short "the Tribunal") has awarded compensation of Rs.1,44,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 3000/-
Deduction for personal expenses	½
Multiplier	8
Loss of dependency	Rs. 1,44,000/-

The plea of claimants is that Darshan Lal aged about 50 years was working as karyana merchant and earning Rs. 5000/- per month. The Tribunal has noticed that no document has been produced on record to prove income of the deceased at Rs. 5000/- per month. Raj Kumar PW1 has admitted in his cross examination that his farther was not an income tax assessee. Taking a clue from minimum wage available at the relevant time in July 2001 coupled with failure of the claimants to adduce cogent and convincing evidence with regard to income of the deceased, I do not find any reason to differ with findings of the Tribunal assessing income of the deceased at Rs. 3000/- per month.

The application for compensation has been filed by three sons and mother of the deceased. The Tribunal has noticed that Gulshan Kumar claimant No. 1 aged about 24 years was married having two children and had been selling vegetables. Maninder Pal claimant No. 2 aged about 22 years was married having a child and he was plying rickshaw on hire basis.

However, Raj Kumar claimant No. 3 had deposed that he was unmarried and had studied upto B.A. IInd year but was not doing any work. Suhagwanti wife of Darshan Lal pre-deceased him. Claimant No. 4 Smt. Shanti Devi is the grand mother of claimants No. 1 to 3 and mother of deceased Darshan Lal. Taking into consideration that two of the claimants had their independent source of earning, interest of justice would be served if deduction for personal expenses is taken to the tune of 1/3rd. The deceased was 50 years old. Appropriate multiplier for computing loss of dependency would be 13. Claimants shall be entitle to addition in income for future prospects @ 25%. In this manner, loss of dependency is calculated at **Rs. 3,90,000/-** [3000 x 12 x13= 4,68,000 +1,17,000 (25%)= 5,85,000- 1,95,000(1/3rd).

Under conventional heads, claimants shall be entitle to Rs. 30,000/- i.e. Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss of estate.

Total compensation is **Rs. 4,20,000/-** and the additional amount is **Rs.2,76,000/-** (4,20,000-1,44,000), payable with interest @ 7.5% per annum from the date of petition till realization.

Counsel for the insurance company has submitted that driving licence, if any, possessed by Dewa Nand Sharma, driver of offending vehicle Tata 407 No. HR-37-5603 was not produced on record, therefore, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants.

Admittedly, the insurance company has neither filed any appeal pressing for right of recovery nor filed any cross objections in the appeal preferred by the claimants. There was no notice issued to the registered owner in the appeal preferred by the claimants. In the given circumstances, contention raised by counsel for the insurance company is not tenable and accordingly rejected.

In view of what has been discussed hereinabove, the appeal is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

FAO No. 1135 of 2003

The Tribunal has awarded compensation of Rs. 2,75,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 4250/-
Deduction for personal expenses	Rs. 2200/- per month
Multiplier	11
Loss of dependency	Rs. 2,70,600/-
Loss of consortium and cremation charges	Rs. 4400/-

The plea of the claimants is that Pardeep Kumar Vasan was working as supervisor with M/s Nagpal Knitwears at salary of Rs. 5000/- per month. The claimants examined Manoj Kumar PW1 of M/s Nagpal Knitwears to prove that Pardeep Kumar Vasan was working with the said concern at a monthly salary of Rs. 5000/-. He produced salary certificate Ex. P1 and accounts maintained by the firm Exs. P2 to P31.

Counsel for the parties have expressed their inability to produce copy of statement of Manoj Kumar and documents Exs. P2 to P31 produced by the witness for perusal and appreciation of the court. Records of the case have burnt. However, perusal of findings of the Tribunal would reveal that the Tribunal has not disbelieved testimony of Manoj Kumar and the documents produced by the witness. However, the Tribunal has noticed that copy of account of M/s Nagpal Knitwears would reveal that salary paid to Pardeep Kumar Vasan is shown in the range of 4000-4250/- per month and accordingly his monthly income is assessed at Rs. 4250/-. In the given circumstances, findings of the Tribunal assessing income of the deceased at Rs. 4250/- per month are liable to be affirmed.

The application for compensation has been filed by widow, two minor children and mother of the deceased. In view of judgments passed by Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**, **Munna Lal Jain vs. Vipin Kumar Sharma 2015(3) RCR (Civil) 447** and **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** admissible deduction would be 1/4th. As the deceased was 37 years old, admissible multiplier is 15. Claimants shall be entitle to addition in income for future prospects @ 40%. In this manner, loss of dependency is calculated at **Rs.8,03,250/-** [4250 x12 x15 = 7,65,000+3,06,000(40%) =10,71,000 – 2,67,750(1/4th).

Under conventional heads, claimants shall be entitled to Rs. 70,000/- in the light of judgments in **Pranay Sethi and others' case (supra)** and latest three Judge Bench judgment of Hon'ble the Supreme Court **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034,** detailed hereunder:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

Total compensation is **Rs.8,73,250/-** and the additional amount is **Rs. 5,98,250/-** (8,73,250- 2,75,000), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

10.1.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No