IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.2896 of 2003 (O&M)
Date of Decision:06.02.2019

Bimla and others ....Appellants

Versus

Azad Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr.Gautam Kalie, Advocate for
Mr.Rajiv Sharma, Advocate for the appellants.

None for the respondents.

*****

B.S.WALIA, J.(ORAL)

Appeal has been filed by the widow, four children and mother of Sohan Lal who died in motor vehicular accident on 10.02.1993, seeking enhancement of compensation of ₹60,000/- i.e. 50% of ₹1,20,000/- (on account of contributory negligence) awarded by the learned Motor Accidents Claim Tribunal, Faridabad (herein after referred to the Tribunal) alongwith interest @ 12% per annum from the date of claim petition till the date of realization.

2. Claim for enhancement is made on the ground that despite their being six claimants, deduction have wrongly been made out of the 1/3rd of income of the deceased. Secondly, despite the categorical finding of the deceased being 45 years of age on the basis of postmortem report, multiplier of '10' had been applied as against the requirement of multiplier of '14'.

FAO No.2896 of 2003 (O&M)

Thirdly as against the entitlement to take the 25% of the established income of the deceased minus tax component into account for the purpose of working out the future prospectus, no amount has been awarded on account of future prospectus. Lastly no amount of compensation has been awarded under the conventional heads.

3. None is present on behalf of the respondents. Since the appeal is of the year 2003, while accident is of the year 1993, I am not inclined to adjourn the case. Accordingly, with the able assistance of learned counsel for the appellants, I have gone over the record.

4. Admittedly, as per the post-mortem report the deceased was of 45 years of age and left behind 06 dependents i.e. wife, four minor children as well as mother. The learned Tribunal treated the income of the deceased on the basis of minimum wages @ ₹1500/- per month and applied multiplier of '10' instead of 14. As per paragraph No.21 of the decision of Hon'ble the Supreme Court in Sarla Verma Vs. Delhi Transport Co-op, and another, 2009 (3) RCR Civil 77, in case of 06 dependants, deduction of personal expenses of the deceased is to be made @ 1/4th and not @ 1/3rd. Accordingly, as against deduction ordered @ 1/3rd income of the income of the deceased towards his personal expenses, deduction shall be made @ 1/4th of the income of the deceased while computing the compensation payable.

5. As per paragraph No.21 of the decision in Sarla Verma's case (supra) in case of the deceased being between the age group 41 years to 45 years, multiplier of 14 is applicable. Since the deceased was found to be 45

years of age as per the postmortem report, therefore, multiplier of '14' is applicable instead of '10' as applied by the learned Tribunal.

6. As per paragraph No.61(4)(i) of the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. Versus Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, where the deceased was between the age of 40 to 50 years and was self employed, 25% of the established income of the deceased minus tax component is to be taken into account towards future prospectus while computing compensation payable. Accordingly, 25% of the established income of the deceased minus tax component shall be taken into account towards future prospectus while computing the compensation payable.

7. As per paragraph No.61(viii) of the decision in Pranay Sethi's case(supra) ₹15,000/- is payable on account of loss of funeral expenses and alike amount is payable on account of loss of estate expenses while ₹40,000/- is payable on account of loss of spousal consortium. However, as per decision of Hon'ble Supreme the Court in Megma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram, 2018 ₹40,000/- is payable to each child of the deceased on account of loss of parental consortium. However, no amount is payable on account of loss of filial consortium on account of the deceased being married.

8. Accordingly, the widow and four minor children of the deceased are held entitled to ₹2,00,000/- on account of loss of spousal/ parental consortium. However, in view of the decision of Hon'ble the

FAO No.2896 of 2003 (O&M)

Supreme Court in Vimla Devi and others Vs. National Insurance Company Ltd. And others 2019 RCR (Civil) 80, which was a case pertaining to a widow and two minor children, compensation on account of loss of spousal/ parental consortium was restricted to ₹1 Lakh. Accordingly, compensation on account of loss of spousal/ parental consortium is restricted in the instant case to ₹1 Lakh.

9. In the circumstances, the appellant/ claimants are held entitled to the following compensation:-

S. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
1	Income	₹1500/-	₹1500/-
2	Future Prospects	Nil	25% of ₹1500/- i.e. ₹375
3.	Total Income assessed	₹1500/-	₹1875/-
4.	Deduction	1/3rd of ₹1500 i.e. ₹500/-	1/4th of ₹1875 i.e. ₹469/-
5.	Multiplier applied	10	14
6.	Dependency	₹1000X12X10=₹1,20,000/-	₹1406X12X14=₹2,36,208/-
7.	Funeral expenses	Nil	₹15,000/-
8.	Loss of Estate	Nil	₹15,000/-
9.	Loss of Consortium	Nil	₹2.00 Lakh i.e. ₹40,000/- as spousal/ parental consortium to each of the appellant Nos.1 to 5. However, the same is restricted to Rs.1 Lakh in view of the decision in Vimla Devi's case (supra)
	Total	₹1,20,000/-	₹3,66,208/-

FAO No.2896 of 2003 (O&M)

10. Accordingly, as against the compensation of ₹1,20,000/- awarded by the Tribunal, the claimants/ appellants are entitled to compensation of ₹3,66,208/- alongwith interest @ 7.5% per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier after first payment of ₹1,00,000/- on account of loss of spousal/ parental consortium to the widow/ children of the deceased i.e. appellant Nos.1 to 5.

11. Needless to mention, the Insurance Company shall deduct income tax liability, if any, qua future prospectus in accordance with the decision in Pranay Sethi's case (supra).

12. Accordingly, appeal is allowed by modifying Award dated 12.08.2000 passed by the learned Tribunal to the extent as noted above.

(B.S.WALIA)
JUDGE

06.02.2019
raman

Whether speaking/reasoned Yes/No

Whether reportable Yes/No