IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3075 of 2003
Date of Decision:11.02.2019

Smt. Savitri Devi and others. ....Appellants

VERSUS

Karan Kumar and others. ...Respondents

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

Present: Mr. Naren Pratap Singh, Advocate for the appellants.

Mr. Abhishek Goyal, Advocate for
Mr. Pardeep Goyal, Advocate for
respondent No.3-Insurance Company.

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B.S. WALIA, JUDGE (ORAL).,

1. Appeal has been filed by the mother, widow and two daughters of Om Parkash, who died on 26.11.2000 in a motor vehicular accident which took place on 25.11.2000. Prayer is for enhancement of compensation of ₹1,99,800/- awarded by the learned Motor Accidents Claims Tribunal, Gurugram (hereinafter referred to as 'the Tribunal).

2. Learned counsel for the appellants contends that the appeal is liable to be allowed, award modified and compensation payable enhanced by taking into account 25% of the established income of the deceased minus the tax component towards future prospects while computing compensation payable besides, by awarding appropriate compensation under the conventional heads. Learned counsel for the appellants further contends that multiplier of 13 should have been applied instead of 11 taken into account by the learned Tribunal on account of the deceased being 50 years of age. Learned counsel further contends that the age of the deceased was taken into account on the basis of the postmortem report and since the same was based on approximation, the benefit was to go in favour of the appellant-claimants.

Learned counsel further contends that deduction was also wrongly made @ 1/3rd whereas in view of four dependents, deduction was to be made @ 1/4th.

3. Per contra, learned counsel for the respondent-Insurance Company contends that multiplier of 11 had rightly been applied as was applicable for a deceased between the age group of 51 to 55 years.

4. I have considered the submissions of learned counsel for the parties.

5. Admittedly, no evidence was led with regard to the age of the deceased and the Tribunal took the age of the deceased as 50 years on the basis of postmortem report. Since the postmortem report is based on approximation, therefore, benefit of the same would go in favour of the appellant-claimants.

Accordingly, multiplier of 13 is held applicable in the case of deceased by treating him to be falling in the age group of 46 to 50 years. Accordingly, multiplier of 13 will be taken into account while computing the compensation payable. Since the deceased was an unskilled labourer, his income has been taken as ₹2100/- per month as per the minimum wages payable during the relevant period therefore, as per paragraph No.61(iv) of the decision in **National Insurance Company Limited vs. Pranay Sethi and others-2017(4) RCR (Civil) 1009,** 25% of the established income of the deceased minus the tax component shall be taken into account while computing the compensation payable on account of future prospects besides as per paragraph No.61(viii) of the decision in **Pranay Sethi's** case (supra), as against compensation of ₹5,000/- awarded on account of funeral expenses, ₹5,000/- on account of loss of consortium and nil on account of loss of estate, the appellants are held entitled to award of ₹15,000/- on account of funeral expenses, like amount on account of loss of estate, while the widow is held entitled to ₹40,000/- on account of loss of spousal consortium. Since the deceased left behind four dependants, deduction qua personal expenses is to be made @ 1/4th of the income of the deceased, as against @ 1/3rd made by the Tribunal. Moreover, in view of paragraph No.8.7 of the decision of Supreme Court in **Magma General Insurance Co. Ltd vs, Nanu Ram Alias Chuhru Ram, 2018(4) RCR (Civil) 333**, two daughters of the deceased are held entitled to award of ₹40,000/- each on account of parental consortium.

6. Faced with the aforementioned position, learned counsel for the appellant contends that in view of the subsequent decision of Hon'ble the Supreme Court in **Vimla Devi and others vs National Insurance Company Ltd. and others 2019 (1) RCR (Civil) 86**, award of compensation on account of loss of spousal and parental consortium in the case of widow and two minor children was restricted to ₹ 1,00,000/-, therefore, in instant case also compensation on said account be restricted to ₹ 1,00,000/-.

In the light of position as noted above, compensation on account of loss of spousal and parental consortium to the widow and two children of the deceased is restricted to ₹ 1,00,000/- in view of the decision in Vimla Devi's case (Supra).

7. Accordingly, in the light of the position as noted above, the appellants are held entitled to the following compensation:

Sr. No.	**Head**	**Amount assessed by Tribunal in ₹**	**Amount assessed by this Court in ₹**
1	Monthly Income	2100/-	2100/-
2	Future prospects	Nil	25%=525/- 2100+525=2625/-
3	Deduction towards personal expenses of deceased.	1/3rd =700/-	1/4th =656/-

4	Multiplier applied	11	13
5	Compensation awarded	1400x12x11=1,84,800/-	1969x12x13=3,07,164/-
6	Loss of consortium	5000/-	40,000/- to widow and 40,000/- to each child i.e. 1,20,000/- however, in view of decision in Vimla Devi's case (supra), the loss of consortium is restricted to 1,00,000/-
7	Funeral expenses	5000/-	15000/-
8	Loss of estate	Nil	15,000/-
9	Medicines and transportation	5000/-	5000/-
10	Total	1,99,800/-	4,42,164/-

8. Accordingly, in the light of the position as noted above, the appellants are held entitled to award of compensation of **₹4,42,164/-** as against compensation of ₹1,99,800/- awarded by the learned Tribunal along with interest @ 9% per annum with effect from the date of claim petition till date of payment less amount, if any, already paid.

9. Needless to mention, tax liability, if any, qua future prospects shall be deducted in accordance with the decision in **Pranay Sethi's** case (Supra). Apportionment of compensation amongst the appellants shall be in accordance with the ratio stipulated by the Tribunal after first making payment of loss of spousal/parental consortium to the widow and two daughters of the deceased.

10. Accordingly, appeal is allowed. Award dated 30.04.2003 passed by the learned M.A.C.T., Gurugram is modified to the extent as noted above.

(B.S. WALIA)
JUDGE

February 11, 2019
ps

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