IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1358 of 2002 (O&M)
Date of decision : 11.2.2019
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Promila and others
................Appellants

vs.

Hari Om and others
................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Ms. Gurdeep Kaur, Advocate and
Mr. Sandeep K. Sharma, Advocate for the appellants.

Mr. Sandeep Suri, Advocate for respondent No.3.

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H. S. Madaan, J. (Oral)

On account of death of Satish, aged about 27 years, in a road side accident, which took place on 5.5.2000 at about 8.30 A.M. in the area of village Ismaila, allegedly on account of rash and negligent driving of bus No. HR-46A/1238(hereinafter to be referred to as 'the offending bus'), by respondent No.1 Hari Om, Smt. Promila - wife, Master Ankit- minor son, Baby Anu - minor daughter and Smt. Om Pati- mother of Satish deceased, brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Hari Om – driver, State of Haryana through Secretary Haryana Roadways, Jind Depot and National Insurance Company Rohtak, insurer of the offending bus, claiming compensation of Rs.15 lacs.

After contest, the Motor Accident Claims Tribunal, Rohtak, vide award dated 9.1.2002, accepted the application and granted compensation of Rs.2,30,400/- with interest and costs, payable by all the three respondents, jointly and severally. Share of minor claimants was ordered to be deposited in the form of FD with some nationalized bank, till they attain the age of majority.

Feeling dissatisfied with the amount of compensation awarded to them, the claimants have approached this Court by way of filing the present appeal, notice of which was given to the respondents.

All the three respondents have appeared initially. However, subsequently, there was no representation on behalf of respondents No. 1 and 2 and appeal is being contested by respondent No.3 – Insurance company only.

I have heard learned counsel for the claimants, learned counsel for the respondent-insurance company, besides going through the record.

On the basis of record and evidence adduced before it, the Tribunal has taken the monthly income of deceased to be Rs.1,800/-. Though a certificate to the effect that he was a Welder has been proved on record, but then no convincing evidence with regard to his monthly income being Rs.3,000/- as claimed by the claimants, could be brought on the file. Therefore, I find that the Tribunal did not do anything wrong in taking monthly income of the deceased to be

Rs.1,800/-.

However, no amount was added therein towards future prospects. In terms of authority ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,*** by the Apex Court, where it has been held that when the deceased was below the age of 40 years and was self employed or on a fixed salary, an addition of 40% of established income should be made. In this case, the deceased was aged about 27 years. Therefore 40% of his income is to be added towards his future prospects. Doing that, his monthly income comes out to Rs. 2,520/- (Rs.1800 + 720).

The Tribunal fell in error in deducting 1/3rd of the monthly income towards personal expenses of the deceased, when it should have been 1/4th, in view of ratio of authority ***Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,*** since the number of claimants in this case happened to be four. Thus making deduction of 1/4th from the monthly income, the dependancy of the claimants comes out to Rs.1,890/- per month (Rs.2,520 – Rs.630) The annual dependancy comes to Rs.22,680/- (Rs.1,890 X 12).

The Tribunal again fell in error in using the multiplier of 16, which keeping in view age of the deceased should have been that of 17, as observed in ***Smt. Sarla Verma's case (Supra).*** Therefore, total compensation payable is worked out to Rs.3,85,560/- (Rs.22,680 X 17).

The Tribunal has not awarded any amount to the claimants under the conventional Heads. In terms of ratio of ***Pranay Sethi's***

case (Supra), the claimants are entitled to get Rs.15,000 under the Head loss of estate, Rs.40,000/- under the Head loss of consortium and Rs.15,000/- towards funeral expenses. Thus the total compensation payable to the claimants comes to Rs. 4,55,560/- (Rs. 3,85,560 + 70,000), with interest and costs. The details of apportionment and other terms and conditions have been mentioned in the award itself. In that way the additional compensation comes to Rs.2,25,160/- (Rs. 4,55,560 – 2,30,400), with interest @ 7.5% per annum from the date of filing of appeal till actual realization, besides costs of appeal, as awarded to the claimants, payable by all the three respondents jointly and severally. The claimants shall be entitled to enhanced compensation in the same share, as has been awarded to them by the Tribunal.

If the minor claimants have attained majority by now, on presentation of proof by them in that regard, the enhanced compensation be paid to them directly, otherwise if they are still minors, the terms and conditions so directed in the award shall be applicable towards enhanced compensation also.

The appeal stands disposed of accordingly.

(H.S. Madaan)
Judge

11.2.2019
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No