IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1424 of 2002
Date of decision: 01.04.2019

Neelam Devi and others. ….. Appellants

Versus

Raj Kumar and others. ….. Respondents

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

Present: Ms. Lipika Dahiya Mamli, Advocate for
Mr. R.S. Mamli, Advocat for the appellants.

None for respondent Nos.1&2.

Mr. V.K. Garg, Advocate for respondent No.3/Insurance Company.

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B.S. WALIA, J. (ORAL)

[1] Appeal has been filed by the widow, three minor children and parents of Mohinder Singh who died on 12.11.1999 on account of a motor vehicular accident which took place on 01.11.1999.

[2] Prayer is for enhancement of compensation of ₹3,51,400/- awarded by the learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal') to the appellants.

[3] A perusal of the award passed by the learned Tribunal reveals that the learned Tribunal took into account the age of the deceased as 25-26 years, assessed income of the deceased at ₹2550/- per month, made deduction of 1/3rd of his income towards his personal expenses, applied multiplier of 16 and thereafter, by awarding ₹10,000/- on account of funeral

expenses, ₹15,000/- on account of loss of consortium, awarded total compensation of ₹3,51,400/-.

[4] Learned counsel for the appellants contended that the deceased was 25-26 years of age; therefore, multiplier of 18 was required to be applied. Secondly, that since the deceased had left behind six dependents; deduction ought to have been made @ 1/4th of the income of the deceased instead of 1/3rd. Thirdly, despite entitlement to addition of 40% of the established income of the deceased towards grant of future prospects, no compensation had been awarded on account of future prospects. Lastly, that as against entitlement to ₹15,000/- on account of funeral expenses, ₹ 15,000/- on account of loss of estate and ₹ 40,000/- on account of loss of consortium, only amount of ₹ 10,000/- had been awarded on account of funeral expenses and ₹ 15,000/- on account of loss of consortium.

[5] Learned counsel for respondent No.3/Insurance Company fairly does not oppose the aforesaid claim of the appellants except to the extent that since the deceased was stated to be around 25-26 years of age and had left behind, amongst other dependents, three children aged 2, 3 and 5 years of age, therefore, age of the deceased could safely be presumed to be more than 25 years, therefore, multiplier of 17 should be applicable.

[6] I have considered the submissions of learned counsel for the parties.

[7] Admittedly, no evidence was led with regard to the age of the deceased except for making a statement that he was 25-26 years of age. However, the fact remains that amongst other dependents, the deceased left behind three children aged 2, 3 and 5 years of age. In the circumstances, it can safely be presumed that the deceased was more than 25 years of age.

[8] In the circumstances, in view of the decision of Hon'ble the Supreme Court in **Sarla Verma vs Delhi Transport Corporation, 2009 ACJ 1298** and presuming the deceased to be between the age group of 26 to 30 years, multiplier of 17 is held to be applicable instead of multiplier of 16.

[9] Secondly, as per paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others, 2017 (4) RCR (Civil) 1009,** the appellants are held entitled to addition of 40% of the established income of the deceased minus the tax component on account of the deceased being self employed and less than 40 years of age.

In the instant case, since counsel for the parties are in agreement that the notional income of the deceased was below the taxable limits, therefore, it is 40% of ₹ 2550/- i.e. the established notional income of the deceased which shall be taken into account for working out the future prospects payable.

[10] Thirdly, as per paragraph No.14 of the decision of Hon'ble the Supreme Court in Sarla Verma's case (Supra) where the deceased left behind 4 to 6 dependents, deduction is to be made @ 1/4th of the income of the deceased.

Since in the instant case, the deceased left behind six dependents, therefore, deduction of personal expenses of the deceased shall be made @ 1/4th of the income of the deceased instead of 1/3rd made by the learned Tribunal.

[11] Lastly, as per paragraph No.61 (viii) of the decision in Pranay Sethi's case (Supra), the appellants are held entitled to ₹15,000/- on account of loss of estate, ₹15,000/- on account of funeral expenses and ₹40,000/- on account of loss of consortium.

Accordingly, in the instant case, amount of ₹10,000/- awarded on account of funeral expenses and ₹15,000/- on account of loss of consortium are enhanced to ₹15,000/- and ₹40,000/- respectively. Apart from this, the appellants are held entitled to ₹15,000/- on account of loss of estate.

[12] In the light of the position as noted above, the appellants are held entitled to the following compensation:-

Sr. No.	**Heads**	**Amount assessed by the Tribunal**	**Amount assessed by the Court**
1.	Income	₹ 2550/-	₹ 2550/-
2.	Future Prospects	Nil	40 % of ₹ 2550/- = ₹ 1020/-
3.	Total Income Assessed	₹ 2550/-	₹ 2550/- + ₹ 1020/- = ₹ 3570/-
4.	Multiplier applied	16	17
5.	Deduction (towards personal expenses of deceased)	1/3rd of ₹ 2550/- ₹ 850/-	1/4th of ₹ 3570/- = ₹ 892/-
6.	Dependency (Annual)	₹ 2550/- - ₹ 850/- = ₹ 1700/- x 12 = ₹ 20,400/-	₹ 3570/- - ₹ 892/- = ₹ 2678 /- x 12 = ₹ 32,136/-
7.	Compensation awarded by applying multiplier	₹ 20,400/- x 16 = ₹ 3,26,400/-	₹ 32,136/- x 17 = ₹ 5,46,312/-
8.	Loss of consortium	₹ 15,000/-	₹ 40,000/-
10.	Funeral Expenses	₹ 10,000/-	₹ 15,000/-
11.	Loss of Estate	NIL	₹ 15,000/-
12.	Rate of interest	9% per annum	9 % per annum
	Total	**₹ 3,51,400/-**	**₹ 6,16,312/-**

[13] Accordingly, as against compensation of ₹3,51,400/- awarded by the Tribunal, the appellants are held entitled to compensation of ₹ **6,16,312/-**along with interest @ 9 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier. Apportionment of the compensation shall be made in accordance with the ratio stipulated in the award passed by the learned Tribunal.

[14] Accordingly, appeal is allowed by modifying Award dated 05.11.2001 passed by the learned Tribunal, Kurukshetra to the extent as noted above.

(B.S. WALIA)
JUDGE

01.04.2019
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.