IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1404 of 2004
Date of Decision : 21.02.2019

Priya (minor) and others ….Appellants
V/S
Mrs. Krishna Devi and others ….Respondents

CORAM : <u>HON'BLE MR. JUSTICE B.S. WALIA</u>

Present: Ms. Ekta Thakur, Advocate for the appellants.
Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.
None for the other respondents.

<u>B.S. WALIA, J.</u>

[1] Appeal has been filed by the husband, mother-in-law and then minor daughter of Rajinder Kaur, a house wife, who died in a motor vehicular accident on 30.08.2000.

[2] Prayer is for enhancement of compensation of ₹3,84,000/- awarded by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal'). The learned Tribunal by taking into account that the deceased was a house wife, aged about 25 years, took her contribution to her family @ ₹2000/- per month and by applying multiplier of '16' awarded total compensation of ₹3,84,000/-.

[3] Learned counsel for the appellants contends that the appeal is liable to be allowed, award modified, compensation payable enhanced by taking into account multiplier of '18' besides awarding ₹15,000/- on account of funeral expenses, ₹15,000/- on account of loss of estate and ₹40,000/- on account of loss of spousal consortium besides future prospects.

[4] Paper book and record of the FAO was destroyed in a fire. The paper book has been re-constructed from the salvaged record.

[5] I have considered the submissions of learned counsel for the appellants, as well as the respondent-Insurance Company in the light of the legal position.

[6] The learned Tribunal took the age of the deceased as 25 years and contribution towards her family as ₹2,000/- per month. Minimum wages for an unskilled labourer during the relevant period were ₹1843.50. Accordingly, the contribution of the deceased towards her family at ₹2,000/- per month does not warrant any interference. In view of the deceased being 25 years of age, multiplier of '18' is applicable as per Para No.21 of the decision of Hon'ble the Supreme Court in '***Sarla Verma and others*** *versus* ***Delhi Transport Corporation and another***', *2009(6) SCC 121*. Accordingly, as against multiplier of '16' applied by the learned Tribunal, multiplier of '18' is held applicable. As regards plea for grant of future prospects, it needs noticing that in cases where notional contribution is taken into account, no future prospects are payable nor is any deduction to be made in view of the decision of a co-ordinate Bench of this Court in '***Cholamandalam M.S. General Insurance Co. Ltd.*** *versus* ***Lakhmi Chand***', *2015(4) PLR 405*. Relevant extract of the decision in Cholamandalam's case (supra) is reproduced as under:-

> *"9. If we are taking the notional income for a house wife then no amount should be added for future prospects. The Hon'ble Supreme Court in* ***Arun Kumar Aggarwal and another v. National Insurance Company and others, 2010 (3) PLR (SC) 418*** *did not award anything for future prospects where a housewife had died. Similarly in* ***Krishan Gopal v. Lala, 2013 (4) RCR (Civil) 276*** *a child had died and two Judges Bench of the Hon'ble Supreme Court while awarding compensation did not take anything for future prospects. In my opinion when the claimants are unable to prove that the deceased was earning and notional income is taken into account for calculating the loss, then benefit for future prospects should not be added. It is one thing to count income for future prospects when the income is proven but where the income is notional as in the case of a student or a housewife, it may not*

be appropriate to award further benefit of notional future prospects, particularly when in the cases of notional income the Courts are not making any deduction for personal expenses. Taking the notional income to be L 5,000/-, the annual contribution would be L 60,000/-. Applying the multiplier of 16 the compensation would come to L 9,60,000/-. To this L 1,00,000/- should be added for loss of consortium, L 1,00,000/- for loss of love and affection, L 15,000/- more for funeral expenses raising the total to L 11,75,000/-."

[7] Admittedly, no amount was paid on account of funeral expenses, loss of estate or for that matter, loss of spousal consortium, whereas as per Para No.61 (viii) of the decision of Hon'ble the Supreme Court in '***National Insurance Company Limited*** *versus* ***Pranay Sethi and others***', *2014(4) RCR (Civil) 1009,* a sum of ₹15,000/- is payable, on account of funeral expenses, like amount on account of loss of estate besides ₹40,000/- on account of loss of spousal consortium. Accordingly, appellant Nos.1 & 2 i.e. husband and then minor daughter of deceased are held entitled to award of ₹15,000/- on account of funeral expenses, ₹15,000/- on account of loss of estate whereas appellant No.2-husband is held entitled to ₹40,000/- on account of loss of spousal consortium. In light of the position as noted above, appellant Nos.1 & 2 are held entitled to the following compensation:-

Particulars	**Assessed by the Tribunal (in ₹)**	**Amount assessed by this Court (in ₹)**
Notional contribution of the deceased towards her family	2000/-	2000/-
Future Prospects	NIL	NIL
Deductions towards personal expenses	NIL	NIL
Multiplier	16	18
Compensation after applying multiplier	2000 x 12 x 16 =3,84,000/-	2000 x 12 x 18 =4,32,000/-
Loss of estate	NIL	15,000/-
Funeral expenses	NIL	15,000/-

Loss of spousal consortium	NIL	40,000/-
Interest	9%	9%
Total compensation	**3,84,000/-**	**5,02,000/-**

[8] Accordingly, in the light of the position as noted above, as against compensation of ₹3,84,000/-, awarded to the appellants-claimants, appellants-claimant Nos.1 & 2 are held entitled to award of compensation of ₹5,02,000/- along with interest @ 9% per annum w.e.f. the date of claim petition till the date of realization. The compensation awarded shall be equally apportioned amongst appellant Nos.1 & 2 after first making payment of ₹40,000/- on account of loss of spousal consortium to the husband of the deceased.

[9] Needless further to mention, apportionment of liability shall be as fixed by the learned Tribunal i.e. 60% to be paid by the owner and driver of the offending vehicle and 40% by the driver of the vehicle in which the deceased was travelling. Besides Insurance Company shall make payment of the awarded amount as ordered by the learned Tribunal and shall be at liberty to recover the same as allowed by the learned Tribunal.

[10] Accordingly, appeal is allowed, award dated 06.12.2003, passed by the learned Tribunal, Chandigarh is modified to the extent as noted above.

(B.S. WALIA)
JUDGE

February 21, 2019
'Rajneesh'

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