IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 175 of 2004 (O&M)
Date of decision: 20.11.2019

Sinder Pal Kaur and another ....*Appellants*

Versus

Raj Kumar and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Surinder Garg, Advocate
for the appellants

Mr. R K Bashamboo, Advocate
for respondent- insurance company

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Rekha Mittal, J. (Oral)

CM No. 23648 CII of 2019

This is an application for early hearing of the appeal.

Heard.

In view of averments made in the application and argument advanced, the application is allowed and main appeal is taken on board today itself.

Main case

The claimants are in appeal seeking enhancement of compensation on account of death of Dr. Mohinder Pal Singh in a motor vehicular accident that took place on 25.11.2000.

The Tribunal awarded Rs.13,16,384/-, in view of findings recorded in para 24 of the award, reads thus:-

"24. *The learned counsel for the respondent number 3 vehemently contended that out of this amount 1/3rd has to be deducted as income tax and at least 1/3rd have to be deducted towards personal expenses of the deceased. Reliance was placed upon the authority laid down in Jasdeep Singh versus Nafe Singh and others 2001 (2), Punjab Law Reporter 130. Though there is no dispute about the fact that 1/3rd of this salary of Rs.17,600/- has to be deducted towards the expenses of the deceased but it does not appeal to the reason that 1/3rd has to be deducted towards income tax. Om Parkash (PW1) deposed in the cross examination that 1/3rd of the pay is generally deducted as income tax subject to savings. In Jasdeep Singh's case (supra) 1/3rd was deducted as income tax. It could be perhaps because when annual income exceeds Rs.five lacs in that eventuality the tax comes 1/3rd of the total income, which is not so in the case of the claimants. Om Parkash (PW1) could not tell in the cross examination that how much tax was deducted from the salary of the deceased during the year 1999-2000. In these circumstances, only 20% is being deducted as income tax out of this salary of the deceased. If we deduct 1/3rd (Rs.5,866/-) as personal expenses of the deceased and 1/5th (Rs.3,520/-) as income tax, the monthly dependency comes to Rs.8,214/-. The annual dependency comes to Rs.98,568/-. The deceased was around 36 years of age at the time of his death. Generally in such cases when the age of the deceased is 36 years multiplier of sixteen should be applied but since the compensation amount would be too high i.e. Around Rs.16 lacs and if interest of that amount is calculated even @ 10% that is likely to exceed the monthly dependency assessed above. Therefore, multiplier of 13 would be just and reasonable in this case. This raises the compensation amount to*

Rs.12,81,384/-. An amount of Rs.10,000/- is awarded to the claimant number 1 on account of loss of consortium and Rs.5,000/- on account of loss of estate. Rs.20,000/- are to be awarded on account of funeral and last rites expenses of the deceased. The entire compensation, thus, comes to Rs.13,16,384/-."

Counsel for the appellants would argue that the claimants may be allowed addition in income for future prospects. The Tribunal has wrongly made deduction qua income tax. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the other hand, has supported assessment made by the Tribunal.

The claimant examined Om Parkash (PW1) to prove employment and income of deceased. He produced salary certificates Ex.P1 and Ex.P2. As per Ex.P2, revised pay of deceased was Rs.17,600/- per month. The Tribunal has rightly considered this income *i.e.* Rs.17,600/- per month for computing loss of dependency. The annual income is Rs.2,11,200/- (17,600 x 12). After deducting income tax *i.e.* Rs.36,691/-, net annual income comes to **Rs.1,74,509/-** (2,11,200 - 36,691). The claimants shall be entitle to addition in income for future prospects @ 50%. Deduction for personal expenses would be 1/3rd as claim has been filed by the widow, minor daughter and parents of deceased but father is not entitle to loss of dependency. As the deceased was 36 years at the relevant time, admissible multiplier is 15. Accordingly, loss of dependency is Rs.26,17,635.00 (Rs.26,17,635/- *i.e.* 1,74,506 x 15 + Rs.13,08,817.50 (50% addition) – Rs.13,08,817.50 (1/3rd deduction).

Under conventional heads, compensation allowed by the

Tribunal is modified to the effect that the claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

Total compensation is Rs.26,87,635/- and additional amount is Rs.13,71,251/- (26,87,635 – 13,16,384), payable with interest @ 7% per annum from the date of petition till realization to widow and daughter of the deceased in equal ratio, to be invested in fixed deposit for a period of one year.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. All pending applications also stand disposed of.

(Rekha Mittal)
Judge

20.11.2019
Mohan Bimbra

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