IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4051-2005(O&M)
Date of decision:-20.11.2019

Smt.Kamla Devi and another

...Appellants

Versus

Punnu Ram and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Dheeraj Narula, Advocate
for the appellants.

Mr.Pradeep Goyal, Advocate
for the respondent No.3 – Insurance Company.

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H.S. MADAAN, J.

Briefly stated, facts of the case are that one Surabh Dubey aged about 17 years, a student of BSC Ist year had unfortunately lost his life in a road side accident, which took place on 11.8.2003 at about 10:00 a.m. when deceased tried to board a bus bearing registration No.HR-39/5617 (hereinafter referred to as the offending bus) but respondent No.1 Punnu Ram, who was driving the said bus suddenly started the bus at a fast speed, as a result deceased fell down and rear tyre of the bus crossed over his body. He suffered serious injuries. He was taken to General Hospital, Sirsa from where he was referred to PGIMS, Rohtak but while being taken there, he died on the way on 11.8.2003.

The parents of the deceased, namely, his mother –

Smt.Kamla Devi, aged about 49 years and father – Sh.Krishan Swaroop, aged about 53 years had brought a claim petition under Section 163-A of the Motor Vehicles Act, 1988 against respondents i.e. Punnu Ram – driver, Satguru Rania Co-operative Transport Society Ltd., Rania – owner and New India Assurance Company Ltd. - insurer of the offending bus, claiming compensation.

On being put to notice, all the respondents had appeared and contested the claim petition. Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, Motor Accidents Claims Tribunal, Sirsa (hereinafter referred to as the Tribunal) vide award dated 2.6.2005 accepted the claim petition and a compensation of Rs.1,76,000/- was awarded to the petitioners/claimants payable by all the respondents jointly and severally with interest @ 9% per annum from the date of institution of the petition till realization. It was directed that out of the compensation amount, a sum of Rs.30,000/- be paid to each of the claimants/petitioners in cash and remaining amount be deposited in their names in fixed deposits with some nationalized bank for a period of three years and they would be entitled to get quarterly interest on that amount.

This award left the claimants aggrieved and they have approached this Court by filing the present appeal seeking enhancement of the compensation.

Notice of the appeal was given to the insurance company and it has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

While quantifying the compensation payable to the claimants, the Tribunal has taken notional income of the deceased to be Rs.15,000/- per annum. However, considering the fact that deceased was aged about 17 years and a student of National College, Sirsa in BSC Ist year and in addition to that he was statedly working as an Electrician on part time basis with Dashmesh Electric Shop, Odha, earning Rs.4,000/- per month, I find that the income so taken is on the lower side. The deceased, a young boy, would definitely have been contributing to the family in several manners helping his parents in various type of works and with the type of education he was getting, it could be expected that he would have landed a good job and earned a handsome amount in short time.

Learned counsel for the appellants/claimants has referred to judgment by a Co-ordinate Bench of this Court passed in FAO-3257 of 2009 (O&M) and Cross Objection NO.8-CII of 2011 (O&M) titled ***Usha Devi and others Versus Mahender Singh and another***, wherein while dealing with a claim petition under Section 163-A of the Motor Vehicles Act relating to death of a person where income of the deceased was assessed as Rs.2,100/- per month as that of an unskilled labourer by the Tribunal, the same was taken on higher scale as Rs.3,300/- per month and consequently the compensation was enhanced.

Another judgment referred to by learned counsel for the claimants/appellants was ***Kishan Gopal and another Versus Lala and others, 2013(4) RCR (Civil) 276*** by the Apex Court wherein while dealing with a claim petition under Section 163-A of the Motor Vehicles

Act, criteria for award of compensation was fixed and in case of a child aged 10 years, who was statedly assisting his parents in agricultural occupation, his notional income was taken as Rs.30,000/- per annum considering that had the deceased child been alive, he would have contributed substantially to the family of the appellants by working hard. Multiplier of 15 was used and Rs.50,000/- was awarded under conventional heads i.e. loss of love and affection, funeral expenses and last rites etc.

The third judgment referred to by learned counsel for the appellants/claimants was ***Lata Wadhwa Versus State of Bihar, 2001(4) RCR(Civil)673*** by the Apex Court when method of determining quantum of compensation was narrated observing that the multiplier has been the best and only method of assessing the value of a number of future annual sums.

Thus, I find that it would be proper and appropriate to take the notional income of deceased as Rs.3,300/- per month. After deducting 1/3rd of the amount towards personal and living expenses, the monthly dependency of the claimants comes out to Rs.2,200/- per month and annual dependency comes out to Rs.26,400/-(2200 x 12). As per the second schedule under Section 163-A of the Motor Vehicles Act, 1988 when the deceased was above 15 years of age but not exceeding 20 years then multiplier of 16 is to be used. In the instant case, the Tribunal has wrongly used multiplier of 11. Thus, using multiplier of 16, the compensation comes out to Rs.4,22,400/-(26400 x 16).

The Tribunal has wrongly awarded a sum of Rs.9,500/- under conventional heads. However, the claimants are entitled to Rs.2,000/- as funeral expenses and Rs.2,500/- as loss of estate.

Thus, the total compensation comes out to Rs.4,26,900/- (4,22,400 + 4,500).

The Tribunal has awarded compensation of Rs.1,76,000/-.

In this way, the additional amount comes out to Rs.2,50,900/- (4,26,900 - 1,76,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the additional amount of Rs.2,50,900/-. The other terms and conditions given in the award shall apply to the additional amount as well.

With such modification, the appeal is allowed partly with costs.

20.11.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No