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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.725 of 2007
Date of Decision: 04.02.2019

Dilawar Singh and others

Appellants

Versus

Jaipal Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Deepender Ahlawat, Advocate for the appellants.

Mr. M.K. Pundir, Advocate for respondents No.1 and 2.

Mr. R.C. Kapoor, Advocate for respondent No.3.

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AVNEESH JHINGAN, J (Oral):

The award dated 18.11.2006 passed by the Motor Accident Claims Tribunal, Jhajjar [for brevity 'the Tribunal'] has been assailed by legal heirs of Roshni seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. The appellants are two sons and two daughters of the deceased.

The driver, owner and insurer of TATA Sumo Spacio bearing registration No. HR-16B-8701 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No. 1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that a motor vehicular accident took place on 25.09.2005. Roshni alongwith her son Dilbagh was going for fetching fodder from the fields, on her way, she was hit by a rashly and negligently driven offending vehicle. As a result of the impact, she sustained injuries and was taken to PGIMS, Rohtak where she was declared brought dead. FIR No. 147, dated 25.09.2005 was registered at Police Station Beri.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

In the claim petition it was pleaded that deceased was 50 years old and was earning ₹7,000/- per month from tailoring work and milk dairy and was receiving pension of ₹2,488/-. The claimants failed to prove occupation and monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as ₹1,800/-; 1/3rd deduction for self-expenses was made and multiplier of '11' was applied. The Tribunal awarded a sum of ₹1,68,400/- along with interest @ 6% per annum. The amount awarded included ₹10,000/- under the conventional heads.

Heard learned counsel for the parties, perused the paper book and relevant documents produced by them.

Learned counsel for the appellants contends that income assessed by the Tribunal is on the lower side; 1/3rd deduction for self-expenses has been wrongy made and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the respondents while defending the award resisted any further enhancement. He argues that claimants are major and married children, hence, no case is made out for enhancement of compensation.

The contentions raised by learned counsel for the appellants deserve acceptance. In Indian society, role of a lady for the family cannot be measured in monetary terms. She has various roles as a mother, wife and even as a grand mother. She is not working because of some financial benefit but it is her affection, sincerity and care towards her family that keeps her working round the clock.

The Supreme Court in ***Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others***, 2015 (4) SCC 237, has held as under:

> *"Even assuming Jayvantiben Jitendra Trivedi was not self employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house mother.The services of the mother/wife is available 24 hours and her duties are never fixed.*

> *Courts have recognisedthe contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A housewife/home-maker does not work by the clock and she is inconstant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."*

Thus, the services renderd by the house wife are to be considered while awarding the compensation.

Having a clue from the minimum wages at the time of accident, notional monthly income of the deceased is assessed as ₹2,500/- per month. As the notional income is being assessed, no deduction for self-expenses is to be made. Reliance in this regard is placed on the decision of this Court relying upon a decision of the Supreme Court in case of ***Arun Kumar Aggarwal and another Versus National Insurance Company and others (2010-3) 159 PLR 428 (SC)*** in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others, Vol. CLXXII (2013- 4) 329***, wherein it was held that no deduction for self expenses is to be made in case of notional income. Relevant para is quoted below:

> *"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according totheir age. The notional income of the housewife was takento be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is*

couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

As regard multiplier, the same has rightly been applied by the Tribunal in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

In view of decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157,*** the claimants are entitled to ₹15,000/- each for loss of funeral expenses and for loss of estate.

In view of above discussion, compensation is re-calculated as under:

Monthly Income Assessed	₹ 2,500/-
Applying Multiplier of '11'	₹ 3,30,000/-
Funeral Expenses	₹ 15,000/-
Loss of Estate	₹ 15,000/-

Total	₹ 3,60,000/-

The award dated 18.11.2006 is modified to the extent that amount of ₹1,68,400/- awarded by the Tribunal is enhanced to ₹3,60,000/-.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

February 04, 2019
pankaj baweja

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