IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-960-2006 (O&M)
Date of decision: 02.05.2019

Rajesh Kumari and others

...Appellants

Versus

Ramesh Kumar and others

...Respondents

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

Present: Mr. Kartar Singh Malik-I, Advocate for the appellants.

Mr. Vinod Gupta, Advocate for respondent No.3.

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H.S. MADAAN, J. (Oral)

On account of death of Dinesh Kumar, in a motor vehicular accident, which took place on 05.07.2004 at about 7 PM, in the area near Village Jasia, statedly on account of rash and negligent driving of Canter No.HR-38D-0410 (hereinafter referred to as offending vehicle) by respondent No.1 Ramesh Kumar, legal representatives of deceased, namely Smt. Rajesh Kumari, widow, minor son Master Rahul, aged about 02 years, minor daughter Baby Yogita and mother Smt. Yashwanti, aged about 50 years, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Ramesh Kumar-driver, Smt. Neena Rani-owner and The New India Assurance Company Ltd., Rohtak-insurer of the offending vehicle in question, claiming compensation to the tune of Rs.9 lacs.

Notice of the claim petition was given to the respondents who put in appearance. After contest by respondent Nos.1 to 3, the claim petition was accepted by Motor Accidents Claims Tribunal, Rohtak, vide award dated 28.10.2005 and compensation of Rs.3,86,000/- was awarded to the claimants, taking age of the deceased to be 23 years, his monthly income as Rs.3000/-, along with interest @ 9% p.a., from the date of filing of claim petition till actual realization, payable by all the respondents jointly and severally.

The claimants were not satisfied with the amount of compensation awarded to them by the tribunal and as such, they have approached this Court by way of filing the present appeal, notice of which was given to the respondents, however, only respondent No.3-insurance company has appeared through counsel to offer a contest.

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

As regards the tribunal taking monthly income of deceased to be Rs.3000/-, that appears to be somewhat on the lower side, keeping in view the fact that as per specific case of the claimants, the deceased was possessing the degree of Bachelor of Electro Homeopathic Medicines & Surgery (BEHMS) from Electro Homeopathic Medical Council and as such was a registered Homeopath. His another avocation was that of a cable operator. PW-3 Rajesh Kumari, the claimant, wife of Dinesh Kumar, deceased had categorically stated so, tendering supporting documents in that regard as Ex.P2 & P3. She had deposed that the deceased was having a cable operator shop besides a Homeopathic Clinic in Village Paksama, claiming that his monthly income was Rs.6000/- and the claimants were dependent upon his earnings. Under the circumstances, I find fair and equitable to take monthly income of the deceased to be Rs.4500/-.

The tribunal has not awarded any amount towards future prospects. In terms of the judgment **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, 40% of the monthly income of the deceased is to be added on account of future prospects. Doing that, the monthly income of deceased comes out to Rs.6300/-. Keeping in view the number of dependents upon him, which were four in number, 1/4th of the amount is to be deducted towards personal expenses of the deceased. Doing that, the dependency of claimants worked out to Rs.4725 (6300-1575) and annual dependency comes out to Rs.56700/-.

The tribunal has applied multiplier of 16, however, in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil) 77**, multiplier of 18 is required to be applied. Doing that, the compensation payable comes out to Rs. 10,20,600/-.

The claimants are entitled to get Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-, in view of the judgment Pranay Sethi (supra). Thus, the total compensation payable is arrived at Rs.10,90,600/-.

The tribunal has already awarded compensation of Rs.3,86,000/-. In that way, the claimants are entitled to get an additional compensation of Rs. 7,04600/- (10,90,600 – 3,86,000) along with interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount besides costs of the appeal. The liability of all the three respondents to pay this amount being joint and several. The terms & conditions with regard to apportionment etc., shall remain the same as given in the original award.

It is clarified that in case the minor claimants have attained majority, on furnishing of proof thereof, their shares in the enhanced compensation be released to them directly by way of deposit in their bank accounts. The bank accounts to be furnished before the tribunal at the earliest, to enable the respondents to comply with the judgment.

The appeal stands allowed with costs.

02.05.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No