IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4777-2012 (O&M)
Date of Decision : 18.12.2019

Smt. Santra Devi and others ...... Appellants

Versus

Hoshiyar Singh and others .... Respondents

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

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Present : Mr. Anil Kumar, Advocate
for the appellants.

Mr. Shubham Jain, Advocate
for Mr. Suman Jain, Advocate
for respondent No.3.

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RAMENDRA JAIN, J. (Oral)

Through this appeal, the claimants have sought enhancement of compensation, modifying impugned award dated 23.05.2012 of the Motor Accident Claims Tribunal, Gurgaon (for short 'the Tribunal').

Briefly, Rampal alias Dharampal, aged about 42 years, in the day time of 17.10.2010 died in a motor vehicular accident, caused by respondent No.1 while driving vehicle bearing registration No.HR-61-A-1045, owned by respondent No.2 and insured with respondent No.3, in the area of Village Sidhrawali (Gurgaon).

Being aggrieved of the death of Rampal, his mother, aged around 82 years, widow, two major sons, one minor son and daughter filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation.

Learned Tribunal, after holding trial, awarded a sum of Rs.5,99,600/- alongwith interest at the rate of 7.5% per annum from the date of filing claim petition till realization vide impugned award dated 23.05.2012.

Learned counsel for the appellants contends that the learned Tribunal has erred in not taking into consideration the income tax return of deceased, whereby his yearly income was about Rs.1,28,850/-. The compensation may be awarded to appellants on the basis of aforesaid yearly income of deceased.

On the other hand, learned counsel for respondent No.3-Insurance Company, refuting the above said submissions, contends that income tax return (Ex.P3) for the year 2010-11 and calculation Mark-A have legally been ignored in view of explanation given by PW5 Sarwan Kumar, Legal Assistant M/s Ricco Ltd. Bhiwadi and admission of PW6 Rajesh Kumar in his cross examination that he has no documentary proof regarding part time employment of Rampal with him.

Having given thoughtful consideration to the rival contentions, this court is not inclined to interfere with the findings of learned Tribunal qua the income of deceased to the tune of Rs.4600/- per month for the reasons to follow.

According to appellants-claimants, deceased Rampal alias Dharampal as a contractor with M/s Ricco Ltd. used to supply labour to the said company. As per vouchers, produced by PW5 Sarwan Kumar, Legal Assistance, M/s Ricco Limited, Bhiwadi, deceased Rampal was paid Rs.80,850/- for supply of labour for the period w.e.f. 1.04.2009 to 31.03.2010 i.e. for 12 months, after deducting TDS of Rs.1,689/-.

It is well known to all that labour supplier earns a very little in the shape of his commission against supply of labour to a manufacturing unit or otherwise. Thus, in case deceased Rampal alias Dharampal was paid Rs.80,850/- for 12 months for supply of labour by M/s Ricco Limited, the deceased must not have earned more than Rs.500/- to Rs.1,000/- per month as commission. That apart, alleged income of deceased with PW6 Rajesh Kumar without reference to any documentary proof has to be ignored, in view of admission of this witness that he had no proof regarding alleged employment of Rampal nor qua making payment of Rs.4,000/- per month to him. No other income proof was produced on record by claimants, before the Tribunal, during trial.

From the above discussed evidence, it is apparent that deceased may not be earning more than Rs.1500/- to Rs.2000/- per month. However, learned Tribunal, without any evidence, on humanitarian grounds, took the income of deceased at Rs.4600/- per month.

In view of above discussion, income of deceased cannot be taken more than Rs.4600/- per month, as assessed by the Tribunal.

As per calculation, furnished by learned counsel for respondent No.3-Insurance Company, which is taken on record Mark 'A', the total amount of compensation payable to appellant-claimants, according to ***National Insurance Company Ltd. Vs. Pranay Sethi and others****, 2017 (4) RCR (Civil) 1009,* comes to Rs.7,94,584/-, less Rs.5,99,600/-, already awarded by the learned Tribunal. Meaning thereby, the appellant-claimants are entitled to Rs.1,94,984/- more over and above the compensation awarded by the learned Tribunal.

In view of the above, the appellant-claimants are held entitled to compensation of Rs.1,94,984/- more, over and above the amount of Rs.5,99,600/- already awarded by the learned Tribunal, vide Award impugned herein. Respondent No. 3-Insurance Company, through its counsel is directed to deposit the aforesaid enhanced amount of compensation before the learned Tribunal within one month from today, along with up-to-date interest @ 7.5% per annum from the date of filing of claim petition till realization, for onward disbursement to the appellant-claimants, in proportion so arrived at by it, in accordance with law against proper receipt and identification.

In case aforesaid enhanced amount is not deposited within stipulated time, Insurance Company would be liable to pay the same with interest @15% per annum from the date of expiry of one month.

Disposed of.

(RAMENDRA JAIN)
JUDGE

18.12.2019
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No