IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 5498 of 2012 (O&M)
Date of decision: 29.11.2019

Birmati Devi and another *........Appellant*

Versus

Vipin Kumar and others *.......Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Damodar Khurana, Advocate
for the appellants

Mr. Manish Saini, Advocate for
Mr. R K Saini, Advocate
for respondents No. 1 and 2

Mr. Subhash Goyal, Advocate
for respondent No. 3

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Rekha Mittal, J. (Oral)

CM 19020 CII of 2019

Allowed as prayed for.

CM 19021 CII of 2019

Prayer in this application is for restoration of FAO No. 5498 of 2012, dismissed for non-prosecution vide order dated 24.10.2017.

Heard.

In view of averments made in the application supported by affidavit of Smt. Birmati Devi, one of the applicants, the application is allowed and appeal is restored to its original number and stage. The appeal is taken up for hearing today itself.

CM 25225 CII of 2012

Prayer in this application is for condonation of delay of 166 days in filing the appeal.

Heard.

In view of averments made in the application supported by affidavit of Smt. Birmati Devi, one of the applicants, the application is allowed and delay of 166 days in filing the appeal stands condoned, subject to condition that in case the appellants succeed in appeal, they will forego interest for the period of delay.

The application stands disposed of.

Main case

The claimants are in appeal seeking enhancement of compensation on account of death of Sukhbir Singh in a motor vehicular accident that took place on 29.01.2010.

The Tribunal awarded Rs.6,06,000/-, detailed hereunder:-

-Monthly income of the deceased	Rs.12,000/-
-Deduction for personal expenses	1/3rd
-Multiplier	6
-Loss of dependency	Rs.5,76,000/-
-Loss of consortium	Rs.10,000/-
-Loss of estate	Rs.10,000/-
-Funeral expenses	Rs.10,000/-

Counsel for the appellants would argue that the deceased was regular employee of Haryana Government, drawing salary of Rs.24,330/- per month, evidenced by document Ex.P60. It is argued that adequate compensation may be allowed by calculating loss of dependency on the basis of salary of deceased at the time of death, extending benefit of additional income for future prospects and applying appropriate multiplier.

Counsel representing the insurance company, on the contrary, would argue that since family of deceased is entitle to financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules 2006 (in short, 'Rules of 2006'), the said amount is amenable to deduction out of compensation assessed. In this context, reference has been made to judgment of Hon'ble the Supreme Court ***Reliance General Insurance Company Limited vs Shashi Sharma, 2016 (4) R.C.R. (Civil) 569***.

The deceased was born on 06.07.1954 and between 55-56 years at the time of death. He was drawing salary of Rs.24,330/- per month. The Tribunal has wrongly assessed income of deceased as Rs.12,000/- per month. The entire salary of deceased shall be taken into account for computing loss of dependency. The annual income of deceased comes to Rs.2,91,960/- (24,330 x 12). After deducting income tax *i.e.* Rs.13,592/-, the net annual income is Rs.2,78,368/-. The appellants shall be entitle to addition in income for future prospects @ 15%. Admissible multiplier would be 11.

The claim has been filed by the widow and son of the deceased, thus, deduction for personal expenses would be $1/3^{rd}$. In this manner, loss of dependency is Rs.23,47,570/- (Rs.30,62,048/- *i.e.* 2,78,368 x 11 + Rs.4,59,307 (15% addition) – Rs.11,73,785/- ($1/3^{rd}$ deduction).

The deceased died on 29.01.2010. The widow of deceased shall be entitle to financial assistance under the Rules of 2006 till 31.07.2012. The amount comes to Rs.7,29,900/- (24,330 x 30). However, only 50% thereof *i.e.* Rs.3,64,950/- is liable to be deducted from compensation calculated by this Court. Accordingly, the appellants are entitle to compensation to the tune of Rs.19,82,620/- (23,47,570 – 3,64,950).

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that 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.20,52,620/- (19,82,620 + 70,000) and additional amount is Rs.14,46,620/- (20,52,620 – 6,06,000) payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay of 166 days in filing the appeal, to widow of the deceased, 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.

(Rekha Mittal)
Judge

29.11.2019
Mohan Bimbra

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