IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

216 FAO-6510-2012 (O&M)
Date of Decision : 04.09.2019

Zarhav Devi and another .... Appellants

Versus

Krishan Kumar and others .... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Harshit Jain, Advocate
for the appellants.

None for the respondents.

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RAMENDRA JAIN, J. (ORAL)

Perusal of the file shows that since last many dates i.e. 19.05.2017, 27.10.2017, 24.08.2018 and 06.02.2019, and even today respondents No.1 and 2 have gone un-represented.

Therefore, it can safely be presumed that respondents No.1 and 2 or their counsel are no more interested in pursuing the instant appeal. Therefore, finding no option, they are proceeded *ex parte*.

The claimants have filed the instant appeal for enhancement of compensation, modifying the impugned award dated 10.10.2012 of the Motor Accident Claims Tribunal, Sangrur (for short- 'the Tribunal').

Briefly, on 22.05.2010, deceased Mast Ram, retired cobbler from Punjab Police, pensioner, aged around 69 years at the time of his death, along with his son Rohtas Kumar while going on foot, when reached near bridge of minor canal, on Sangrur-Barnala road near Ajit Nagar Basti, Sangrur, offending car bearing registration No.RJ-13-UA-0349 driven by respondent No.1 in a rash and negligent manner struck against Mast Ram. As a result thereof, he fell down on the road, receiving multiple grievous injuries and succumbed to the same on the way to Civil Hospital, Sangrur.

Being aggrieved of his death, his widow, three major sons and two married daughters filed a claim petition under Section 166 of the Motor Vehicles Act (for short, 'the Act') claiming compensation of Rs.7 lakhs.

After holding trial, learned Tribunal awarded Rs.30,000/-as compensation to appellants No.1 and 4 in the ratio of 2 : 1 vide impugned award dated 10.10.2012, negating the claim of other children of Mast Ram in view of statement of Rohtas Kumar son of deceased as PW1 that they were not dependant upon him.

Learned counsel for the appellants contends that learned Tribunal has erred in not taking monthly income of the deceased at Rs.6,000/-, while calculating compensation. In view of ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009,*** the appellants were also entitled to Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of consortium.

Having given thoughtful consideration to the rival submissions, this Court finds that the appellants are entitled to consolidated compensation of Rs.70,000/- only under the conventional heads of funeral expenses, loss of estate and consortium in view of the ratio laid down in ***Pranay Sethi's case (supra)***. They are not entitled to any enhancement towards loss of income of the deceased, inasmuch as, the appellants did not lead any definite evidence on record qua alleged income of the deceased. PW1 Rohtash Kumar testified that deceased was earning Rs.12,000/- per month as a cobbler from his house, contrary to deposition of their own witness PW4-Mange Ram that income of the deceased was between Rs.5,000/- to Rs.6,000/- per month. There is a vast difference of alleged income of deceased in the statements of above two witnesses. Admittedly, age of the deceased was 69 years at the time of his death. He was a pensioner. According to the statement of PW-3 Prem Kumar Nimbal, Customer Care Officer, Punjab National Bank, Sangrur, appellant No.1 i.e widow of deceased, was getting family pension of Rs.6030/- per month. Other children of the deceased being major and married having their independent source of income cannot be termed as "dependant" upon him. Therefore, in view of above factual position, appellants are held not entitled to any compensation qua alleged loss of income of the deceased.

The claimant-appellants are held entitled to compensation of ₹40,000/-more, over and above the amount of

₹30,000/- 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, 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% from the date of institution of claim petition till realization.

Appellant No.1 is only held entitled to enhanced compensation of Rs.70,000/- with a clarification that in case the aforesaid enhancement compensation is not materialised during the life time of respondent/appellant No.1, in that eventuality appellant No.2 shall not be entitled to pursue any execution against the respondents.

The instant appeal stands disposed of, accordingly.

September 04, 2019 (RAMENDRA JAIN)
anju JUDGE

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