IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 749 of 2012 (O&M)
Date of decision: 26.3.2019

Bimla Devi @ Bimla Wati @ Devki
...Appellant
Versus
Jagtar Singh and others
...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashok Jindal, Advocate,
for the appellant.

None for respondents No. 1 and 2.

Mr. Gopal Mittal, Advocate,
for respondent No.3—United India Insurance Co. Ltd.

JAISHREE THAKUR, J.

This appeal seeks to challenge the award dated 21.10.2011 passed by the Motor Accident Claims Tribunal, Bathinda, wherein the appellant herein has been allowed compensation of ₹3,90,500/- on account of death of of her son Munish Kumar.

In brief, the facts are that on 27.1.2007 deceased Munish Kumar, along with Bimla Devi and Sharda, was going from Chandigarh to Maur Mandi on his car bearing CH-03-Y-5351 and when they reached near Village Ghracho, Police Station Bhawanigarh, they were hit by HR-57-0155 coming from the opposite side, being driven by respondent No.1 in rash and negligent manner, as a result of which, Munish Kumar sustained multiple injuries on his person and ultimately succumbed to the injuries in the PGI, Chandigarh, on 1.2.2007. It was alleged that the accident took place due to the rash and negligent driving of respondent No.1 and consequently FIR 12 dated 29.1.2007, under Sections 304-A, 279, 337, 427 IPC came to be lodged with the Police Station Bhawanigarh. With these averments, claim petition was filed by the appellant, mother of the deceased, claiming she was fully dependent on the deceased for her maintenance and livelihood. It was claimed that the deceased was income tax assessee and was earning ₹10,000/- per month.

The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable, no cause of action has accrued etc. Issues were framed and thereafter evidence was led by the parties. In order to substantiate the claim, the appellant produced Harjit Punia, Inspector Income Tax Department, Ward No. 4/1, Chandigarh, who proved copy of the return of Munish Kumar Ex. A.1.

After scrutiny of the evidence brought on record, the Tribunal held that the the accident was the result of rash and negligent driving of respondent No.1 and on assessment of the facts and evidence before it allowed compensation of ₹3,90,500/-, which has been now challenged in the instant appeal.

Learned counsel for the appellant submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the compensation amount awarded to the appellants deserves to be enhanced. It is submitted that the Tribunal has wrongly applied the multiplier of 9, whereas multiplier of 16 ought to have been applied. Furthermore, no compensation has been awarded on account of future prospects of earnings of the deceased.

On the other hand, learned counsel appearing on behalf of respondent No.3—Insurance company submits that adequate amount of compensation has been awarded by the Tribunal and no interference is called for in the instant appeal.

The Tribunal, after examining the evidence produced by the respective parties held that the deceased was earning ₹84,000/- per year. However, the Tribunal, while treating the deceased as unmarried, held that in view of the fact that the age of the claimant is higher than the age of the deceased, the age of the claimant and not the age of the deceased has to be taken into account for the capitalization of the loss of dependency. In support of his finding, the Tribunal relied upon the judgment rendered in **Shakti Devi Versus New India Insurance Co. Ltd. and another 2010 (4) RCR (Civil) 950.** Further, since the deceased was treated as bachelor, 50% of the income was deducted towards personal expenses of the deceased.

In the cross-examination the appellant while appearing as AW3 stated that the deceased never did any service. He never disclosed regarding his salary. In the income tax return Ex. A.1, the income of ₹8800/- is written as interest on capital, a sum of ₹24,000/- is written as salary from a firm and a sum of ₹60,000/- is written as income from own business. In view of this documentary evidence with regard to the actual income of the deceased, the Tribunal has rightly taken the income of the deceased as ₹84000/- per year.

However, the Tribunal has gone wrong in applying the multiplier of 9, and further not awarding any amount on account of future prospects of earning of the deceased at the rate of 40% and other conventional heads Supreme Court in view of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009.** Since the date of birth of the deceased as per Ex. A1 was 10.8.1975, which is duly corroborated by his matriculation certificate Ex. A.12, therefore, the age of the deceased at the time of the occurrence was 31 years 5 month and 17 days and therefore, multiplier of 16 ought to be applied. In view of the above, compensation payable to the appellant is re-worked and tabulated as under:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Munish Kumar
(ii)	Date of accident	27.1.2007
(iii)	Age of the deceased	31 years
(iv)	Monthly income of the deceased (₹84000 annual ÷12= ₹7000/-)	₹ 7,000/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 7000+₹2800)= ₹ 9800/- per month
(vi)	50% of (v) above deducted towards personal expenses	(₹ 9800-₹4900) = ₹ 4900/- per month
(vii)	Compensation calculated after applying the multiplier of 16	(₹4900X12X16) = ₹ 9,40,800/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
(xi)	Medical expenses	₹ 10000
	Total	₹ 10,20,800

As a sequel of my discussion above, the appeal is allowed to the above extent. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 10,20,800/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the instant appeal till the date of payment.

26.3.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No