IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1674 of 2013
Date of Decision: February 11, 2019

Nanak Chand and others ...... Appellants(s)

Versus

Jitender Kumar and others ..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Tapan Kumar Yadav, Advocate
for the appellants.

Mr. A.S. Sidhu, Advocate
for respondent no.3.

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LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the appellants vide award dated 30.01.2012, passed by the learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal) on account of death of Smt. Bhateri.

Brief facts as mentioned in the petition under Section 166 of the Motor Vehicles Act filed by the claimants, seeking compensation on account of death of Smt. Bhateri in the motor vehicle accident which took place on 05.09.2010 are that Smt. Bhateri was returning from Sai Baba Mandir, Budhera along with her husband Nanak Chand. She was riding pillion on motorcycle, driven by her husband. When they reached in the area of village Dhankot near a bridge, the offending truck bearing registration no. HR-38Q-4204 came from behind, being driven by its driver-respondent no.1 at a high speed, rashly and negligently. It hit the motorcycle while overtaking it, as a result of which Smt. Bhateri and Nanak Chand fell on the road along with the motorcycle. Bhateri suffered head injuries and was shifted to ESI Hospital, Sector 9, Gurgaon for treatment, where she was declared dead by the doctor. It is claimed that the deceased was 38 years of age, working as a multipurpose health worker in Sub Centre, Sidhrawali under Public Health Centre, Bhora Kalan (Gurgaon) and was drawing a salary of Rs.8,100/- per month at the time of her death.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of truck bearing registration No. HR-38Q-4204 by respondent No.1-Jitender Kumar. However, it was held that a deduction of 20% is to be effected from the compensation as the deceased was guilty of contributory negligence to the extent of 20% by not wearing a helmet in violation of the traffic rules and regulations.

Learned Tribunal awarded a sum of ₹3,65,600/- as compensation to the claimants vide impugned award dated 30.01.2012. The deceased was 38 years old at the time of the accident. Income of the deceased was assessed as ₹3,850/- per month. Deduction to the extent of 1/3rd on account of personal expenses was effected and multiplier of 15 was applied. A sum of ₹5,000/- towards funeral expenses, besides, ₹5,000/- to the widower for loss of estate was awarded. Another sum of ₹10,000/- to the widower was awarded towards loss of consortium. Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants argues that as per the notification of August 1993, women were exempted from wearing a helmet in the State of Haryana, therefore, in this situation the finding of contributory negligence is liable to be set aside. Moreover, income of the deceased has been wrongly assessed as ₹3,850/- per month whereas it is proved on record that she was earning ₹8,100/- per month at the time of the accident. Furthermore, increment on account of future prospects should be afforded. Meagre compensation has been awarded under the conventional heads. It is thus prayed that the amount of compensation awarded to the appellants be enhanced accordingly.

Learned counsel for respondent no.3-insurance company submits that the job of Multipurpose Health Worker held by Bhateri was not a permanent job but under a specific Scheme. There is thus no infirmity in the assessment of her income as ₹3,850/- per month. It is submitted that just and reasonable compensation has been afforded by the learned Tribunal, which calls for no interference by this Court. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record.

Learned Tribunal concluded that the present is a case of contributory negligence in as-much-as in case the deceased had been wearing a helmet while riding pillion on the motorcycle, she may have been saved. Contributory negligence to the extent of 20% has been laid at the door of the deceased. It has been vehemently argued by learned counsel for the insurance company that it was incumbent upon the deceased to have worn a helmet. However, he is unable to deny that as per the notification of the year 1993 issued by the State of Haryana women were exempted from wearing protective headgear/helmet. Though it may be true that it is advisable to wear protective headgear while riding pillion on a two-wheeler, it cannot be lost sight of, that there was no mandate, as sought to be urged, to wear a helmet. Moreover, it cannot be said that the accident in question was caused due to the rash and negligent act of the deceased. Accident in question had clearly taken place due to the rash and negligent driving of the offending truck, which struck against the motorcycle on which the deceased was riding pillion. By not taking the measure of wearing a helmet/protective head gear, it cannot be said that the deceased was guilty of a rash and negligent act, which contributed to the occurrence of the accident in any manner. It is the rash and negligent act of the offending truck being driven in a given manner by its driver-respondent no.1, which was responsible for the accident in question. In the peculiar facts and circumstances of the case, finding of contributory negligence on the part of the deceased has been incorrectly rendered by the learned Tribunal. Therefore, this finding is set aside. Thus no deduction is to be effected in the compensation awarded to the claimants on this count.

Learned Tribunal has assessed income of the deceased to be Rs.3,850/- per month on the basis of her initial appointment as ANM. Later she was working as a Multipurpose Health Worker (Female) under the RCH Scheme of the Government of India, earning a sum of Rs.8,100/- per month at the time of her death. Merely because her appointment as Multipurpose Health Worker is mentioned to be temporary, it cannot be a ground to assess her income as Rs.3,850/- per month in the peculiar facts and circumstances of the case. PW-4 Suresh Kumar, Record Clerk from the office of Civil Surgeon, Gurgaon stated that employees like the deceased are reappointed on the same terms and conditions after giving a break of one day. It is not denied that the deceased had been working continuously with the Department from the year 2000 till the accident in 2010. There is no ground to deny her the income she was availing at the time of her death.

Thus income of the deceased is assessed as Rs.8,100/- per month. As she was admittedly 38 years old at the time of the accident, increment of 40% in terms of ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680*** is afforded. Deduction of 1/3rd has been correctly effected by learned Tribunal. Multiplier of 15 has also been correctly applied. The claimants are entitled to Rs.**15,000**/- each on account of funeral expenses and loss of estate. In terms of the judgment of the Hon'ble Supreme Court in ***Vimla Devi and others Vs. National Insurance Company Ltd. and another, 2019 (1) RCR (Civil) 86*,** appellants are entitled to a consolidated sum of Rs. **1,00,000**/- on account of loss of consortium (spousal and parental). Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income after 1/3rd deduction	5,400/- p.m. i.e. 64,800/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	64,800+25,920 (64,800 **x** 40%) = 90,720/-
3.	Total dependency after applying a multiplier of 15	(90,720 **x** 15) = 13,60,800
4.	Funeral expenses	15,000 /-
5.	Loss of estate	15,000/-
6.	Loss of spousal and parental consortium	1,00,000/-
	Grand Total	**Rs.14,90,800/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

February 11, 2019.
Sunil

(LISA GILL)
JUDGE

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