IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1116 of 2015 (O&M)
Date of Decision: December 16, 2019

Rajni and another ...... Appellants(s)

Versus

Gurmail Singh and another ..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vishal Singh, Advocate for
Mr. Keshav Partap Singh, Advocate
for the appellants.

None for respondent no.1.

Mr. Sudhanshu Makkar, Advocate
for respondent no.2.

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LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the claimants vide award dated 03.12.2014, passed by learned Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal').

The appellants-claimants, who are the widow and minor son of the deceased Ashok Kumar, filed a petition under Section 166 the Motor Vehicles Act, 1988, seeking compensation on account of death of Ashok Kumar, due to the injuries suffered by him in the motor vehicle accident, which took place on 04.01.2014. Deceased was claimed to be 57 years old and running a Maniyari Shop, thereby earning of Rs.20,000/- per month.

Learned Tribunal on considering the evidence on record concluded that Ashok Kumar lost his life due to the injuries received by him in the accident in question, which took place on 04.01.2014, due to the rash and negligent driving of the offending car bearing registration No. HR-54-B-3429, by its driver Gurmail Singh - respondent no.1. Learned Tribunal accepted Ashok Kumar to be 57 years old at the time of accident. His income was assessed as Rs.12,000/- per month. Learned Tribunal awarded a sum of Rs.9,04,000/- as compensation to the claimants, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	12,000 per month
2.	Income after deducting 1/3rd as personal living expenses of the deceased	12000 – 4000 = 8,000/- p.m.
3.	Dependency after applying multiplier of 9	8,000 x 12 x 9 = 8,64,000/-
4.	Loss of consortium to widow	20,000/-
5.	Transportation, funeral expenses and last rites	20,000
	Total	**Rs.9,04,000/-**

Learned counsel for the appellants argues that income of the deceased has been incorrectly assessed as Rs.12,000/- per month whereas it is proved on record that he was earning much more than the said amount. Reference is made to the income tax returns Ex.P1 to P3. It is further submitted that increment towards future prospects be awarded and compensation under the conventional heads be re-worked in terms of the judgment of Hon'ble Supreme Court **National Insurance Company**

Limited v. Pranay Sethi and ors., ***2017(16) SCC 680*** and ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors*. 2018(4) RCR Civil 333.** It is thus prayed that compensation be enhanced.

Learned counsel for the insurance company refutes the above said arguments and submits that learned Tribunal has awarded just and reasonable compensation, which calls for no enhancement. It is submitted that the income tax returns Ex.P1 to Ex.P3 were not proved in accordance with law, therefore, same were rightly ignored by the learned Tribunal. It is further submitted that the claimants continued to derive the income from the land owned by the deceased as well as the business being run from the shop. It is, thus, prayed that this appeal be dismissed.

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

The appellants have claimed the deceased Ashok Kumar, aged 57 years to be running a Maniyari shop in the name and style of "Pooja Fancy Store". It is claimed that he was earning about Rs.20,000/- per month at the time of his death. Learned Tribunal has ignored the income tax returns Ex.P1 to Ex.P3 brought on record while observing that neither the officials of the Department have been examined nor the receipt number, initials etc. of the Department are available on the said documents. The said income tax returns were tendered in evidence by the widow of the deceased PW2. PW2 Rajni has given the details of various plots purchased by the deceased from 1999 onwards. She further deposed that a small plot was purchased by her husband for a sum of Rs.5,000/- and a double storey shop was constructed on the said plot and he ultimately shifted his business from the rented shop to his own shop in January 2008 where he was running the Maniyari business. It is further stated that in the year 2006, the deceased had managed to complete the construction of their residential house and they had shifted there from a rented accommodation. While giving the minute details, PW2 has stated that the income of her husband was increasing every year and he was an income tax payee.

Keeping in view the facts and circumstances of the case, I find that the learned Tribunal has erred in ignoring all the income-tax returns. Doubtlessly, Ex.P3, the income tax return for the year 2013-2014 was filed after the death of Ashok Kumar in the accident, which occurred on 04.01.2014. Therefore, the said return is necessarily ignored. As per the income tax return for the year 2012-2013, Ex.P-2, the deceased was in receipt of gross income of Rs.2,36,418/- per annum, which included an agricultural income of Rs.25,250/-. In case, the said income tax from the agricultural pursuits is deducted, the amount comes to Rs.2,11,168/- per annum.

Learned counsel for the insurance company has submitted that there are photographs of the minor son of the deceased sitting in the shop, which shows that business in the shop continued. A perusal of the photocopy of the award reveals that no such photographs are available on record. Learned counsel for the insurance company is unable to inform this Court whether the said photographs were even exhibited/produced before the learned Tribunal.

Though learned counsel for the insurance company has argued that business of the deceased was continued by the wife of the deceased, I do not find such a plea being substantiated from the evidence on record. Reference has been made by the learned counsel for the insurance company to the statement of PW1 Sharwan Kumar i.e. the brother of the deceased wherein, he in response to a suggestions, stated that the wife of the deceased is running his shop, however, learned counsel for the insurance company is unable to deny that in the very next breath PW1 stated that the shop is in fact lying closed and he has categorically denied being incorrect that his brother's widow is still running the said shop of his brother. PW1 has specifically stated that this shop was let out on rent for a sum of Rs.2,000/- per month. It is to be noted that PW2 has categorically stated that the shop in question was let out in September 2014 and business of the deceased had to be closed and his wife or son were not running the business from the said premises. There is indeed no evidence on record, which is pointed out, to rebut the categoric stand of the claimants.

Learned counsel for the insurance company has also referred to the statement of RW1 Jitesh Chawla, C.A., SDO, Sub Division, UHBVNL to contend that electricity bills of this shop were paid right up to September 2014 i.e. the time when this shop is alleged to have been given on rent by PW2. Be that as it may, the consumption of electricity in the said shop and payment of bills thereof or even the photographs if any do not, in any manner, detract from the claim set up by the appellants. Even if the sum of Rs.2,000/- being received by the claimants as monthly rent of the shop in question is excluded, the deceased was in receipt of income of Rs.15,597/- per month which is rounded off to Rs.15,600/-. Income of the deceased is thus assessed as Rs.15,600/- per month.

Keeping in view the judgment of the Hon'ble supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680,*** 10% increment has to be afforded on account of future prospects. Deduction of 1/3rd was correctly effected by learned Tribunal. As the deceased was admittedly 57 years old at the time of the accident, multiplier of 9 was correctly applied by learned Tribunal. Instead of sum of Rs.20,000/- awarded by the learned Tribunal towards transportation, funeral and last rites expenses, the claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate. Instead of a sum of Rs.20,000/- awarded by the learned Tribunal on account of loss of consortium, appellant no.1 is entitled to Rs.40,000/- on account of loss of spousal consortium. Appellant no.2 is entitled to a sum of Rs.40,000/- towards loss of parental consortium in terms of the judgment of Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors*. 2018(4) RCR Civil 333**, as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016, titled Shri Ram General Insurance Co. Ltd. Vs. Beant Kaur and others.

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	15,600 x 12 = 1,87,200/- per annum
2.	Income after deducting 1/3rd as personal living expenses of the deceased	1,87,200 - 62,400/- (1,87,200 x 1/3) = 1,24,800/-
3.	Total income after addition at the rate of 10% on account of future prospects	1,24,800 + 12,480 (72,000 x 25%) = 1,37,280/-
4.	Dependency after applying multiplier of 9	1,37,280 x 9 = 12,35,520/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of spousal consortium to appellant no.1	40,000/-
8.	Loss of parental consortium to appellant no.2	40,000/-
	Total	**13,45,520/-**

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 at the rate of 7.5% per annum on the enhanced amount, from the date of filing of the claim petition till realization. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

December 16, 2019.

Sunil

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