IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 37 of 2014

Date of Decision: February 07 , 2019.

Neelam Kumari and others ...... APPELLANT (s)

Versus

Kesar Singh and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vijay Lath, Advocate
for the appellants.

Mr. Ashwani Talwar, Advocate and
Mr. Akash Sridhar, Advocate
for respondent No.3 – Insurance company

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LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Rupnagar (for short, the 'Tribunal') vide impugned award dated 12.07.2013 on account of death of Raj Kumar in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, the claimants who are the widow, children and mother of Raj Kumar (deceased) filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of Raj Kumar, who lost his life in a motor vehicle accident which took place on 30.05.2012. FIR No.51 dated 31.05.2012 (Ex.P1) was lodged against respondent No.1 at Police Station Nangal. Learned Tribunal on consideration of the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of truck bearing registration No. HP-72-2197 by respondent No.1-Kesar Singh. This finding of the learned Tribunal has attained finality.

The deceased was 46 years old and employed as a Senior Technician (Electrical) in N.F.L., Naya Nangal at the time of the accident. The deceased-Raj Kumar was held to be drawing a salary of ₹39,000/- per month by the learned Tribunal and after deduction of income tax to the tune of ₹38,000/-, income was assessed at ₹4,30,000/- per annum. Deduction to the extent of 1/3rd on account of personal expenses was effected. Multiplier of 13 was applied. Addition to the extent of 30% on account of future prospects was afforded. A sum of ₹30,000/- was awarded on account of loss of consortium to the widow as well as loss of love and affection, besides, ₹5,000/- towards funeral expenses. Learned Tribunal, thus, awarded a total sum of ₹48,85,000/- to the claimants. Aggrieved therefrom, the present appeal has been filed by the claimants.

Learned counsel for the appellants submits that income of the deceased has been wrongly assessed by the learned Tribunal as ₹39,000/- per month, especially in the wake of the specific evidence on record in the shape of salary certificates (Ex.P2 to P13). Deduction to the extent of 1/4th instead of 1/3rd should be effected keeping in view the number of dependants. Moreover, compensation under the conventional heads is meagre. It is thus prayed that the amount of compensation awarded to the appellants be enhanced accordingly.

Learned counsel for respondent No.3-Insurance company however prays that the impugned award does not call for any enhancement of the compensation as the same is reasonable and just in the facts and circumstances of the case. Dismissal of the appeal is prayed for.

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

There is no dispute regarding death of Raj Kumar in a motor vehicle accident which took place on 30.05.2012 due to the rash and negligent driving of the offending truck bearing registration No. HP-72-2197 by respondent No.1-Kesar Singh. Neither is there a dispute regarding liability of the Insurance company. Perusal of salary certificate (Ex.P2 to P13) reveals that gross salary of the deceased, at any point of time, was never less than ₹42,000/- per month. The deceased is shown to be in receipt of gross salary of ₹52,531/- for January 2012, ₹53,179/- for February 2012 and ₹46,079/- for the month of March 2012. The accident took place on 30.05.2012. Perusal of Ex.P13 reveals that it is only the component of income tax which is to be deducted from the gross pay of ₹46,079/-. Reference in this regard can be made to the judgments of the Hon'ble Supreme Court in **National Insurance Company Ltd. v. Indira Srivastava and others**, ***2008(1) RCR(Civil) 359*** and **Sunil Sharma and others v. Bachitar Singh and others**, ***2011(2) RCR(Civil) 708***. Accordingly, income of the deceased is assessed as ₹42,454/- (46079 – 3625) per month.

Addition in income at the rate of 30% on account of future prospects has been rightly afforded by the learned Tribunal in tune with the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. Keeping in view the number of claimants/dependants i.e., five, deduction of $1/4^{th}$ instead of $1/3^{rd}$ is to be effected towards personal expenses as per the guidelines laid down by the Hon'ble

Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil) 77***. Multiplier of 13 has been correctly applied as the deceased was 46 years old at the time of the accident. Instead of ₹5,000/- towards funeral expenses, the claimants are entitled to ₹15,000/- each on account of funeral expenses and loss of estate. Instead of ₹30,000/-, appellant No.1-widow is held entitled to a sum of ₹40,000/- on account of loss of consortium. In the peculiar facts and circumstances of this case, it is considered just and appropriate to award a consolidated sum of ₹1,00,000/- to appellants No.2 to 5 on account of loss of consortium (parental and filial) in terms of the judgment of the Hon'ble Supreme Court in **Vimla Devi and others v. National Insurance Company Ltd. and another**, ***2019(1) RCR (Civil) 86***.

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

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	42,454 p.m. i.e. ₹5,09,448/- per annum
2.	Total income after addition at the rate of 30% on account of future prospects	5,09,448 + (5,09,448 **x** 30%) = 6,62,282
3.	Net income after 1/4th deduction on account of personal expenses	6,62,282 – (6,62,282 **x** 1/4) = 4,96,711
4.	Total dependancy after applying a multiplier of 13	(4,96,711 **x** 13) = 64,57,243
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium @40,000 to appellant No.1	40,000
8.	Loss of parental/filial consortium to appellants No.2 to 5	1,00,000
	Grand Total	₹66,27,243/-

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.

(LISA GILL)
JUDGE

February 07 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No