IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

215 FAO-1433-2016 (O&M)
Date of Decision : 30.08.2019

Parbhasini Panda and others .... Appellants

Versus

Gurjant Singh @ DC and others .... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.P.S.Dhaliwal, Advocate
for the appellants.

Mr. G.S.Ahluwalia, Advocate
for respondent No.3/Insurance Company.

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RAMENDRA JAIN, J. (ORAL)

The claimants have filed instant appeal for enhancement of compensation by modifying the impugned award dated 09.10.2015 of the Motor Accident Claims Tribunal, Barnala (for short-'the Tribunal') passed in a claim petition filed by claimants-appellants under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') on account of death of Ashish Kumar Panda.

Briefly, on 24.12.2013, deceased Ashish Kumar Panda after finishing his work was going on his motorcycle towards Barnala. When, he reached 50 paces away of Standard Chowk, Handiaya, towards Barnala, offending tractor bearing registration No.PB-08BY/5164 driven by respondent No.1 in a rash and negligent manner without blowing any horn suddenly came on the road and struck against his motorcycle. As a result thereof, Ashish Kumar Panda received multiple injuries and succumbed to the same. Being aggrieved of his death in a motor vehicular accident, his widow, minor sons and parents filed a claim petition under Section 166 of the Motor Vehicles Act (in short, 'the Act').

After holding trial, learned Tribunal awarded compensation of Rs.13 lakhs to the appellants along with interest @ 9% per annum from the date of filing the claim petition till realization.

Both the sides are *ad idem* that this appeal has to be decided in accordance with the principles laid down in ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

However, learned counsel for the appellants contends that the learned Tribunal has illegally considered monthly income of the deceased at Rs.10,000/-per month ignoring well proved pay slips Exs.C6 to C16. According to which, the deceased was drawing gross monthly salary in between Rs.35,590/- to Rs.44,661/-. The learned Tribunal illegally did not take into consideration House Rent Allowance paid to the deceased; besides, his basic arrears and other allowances under the heads of organisational, fuel, mobile and conveyance allowance etc.

Refuting the above submission, learned counsel for respondent No.3/Insurance Company contends that except House Rent Allowance no other allowance paid to the deceased could be taken into consideration by the learned Tribunal, inasmuch as all other allowances under the heads of conveyance, organisational allowance, fuel and mobile allowance etc. were attached with the service of the appellant which he used to spend while discharging his official duties. Therefore, the same vanished with the death of Ashish Kumar Panda.

Having given thoughtful consideration to the submissions, this Court is of the view that the learned Tribunal has erred in not adding House Rent Allowance of Rs.5,000/- per month, while assessing compensation. The other allowances paid to the deceased under conveyance, mobile, organisational and fuel etc. cannot be taken into account as the same have gone with death of deceased. Thus taking into account, the House Rent Allowance of Rs.5,000/- being paid to the deceased, his monthly income comes to Rs.15,000/- against Rs.10,000/- taken by the Tribunal. Age of the deceased at the time of his death was 33 years. Therefore, according to ***Pranay Sethi's case (supra),*** 40% has to be added in aforesaid monthly income under the head of future prospects.

Learned counsel for the appellants has filed the calculations (Mark A) taking monthly income of the deceased as Rs.15,000/- whereby the appellants are entitled to a total compensation of Rs.26,88,000/- less Rs.13,00,000/- already awarded by the learned Tribunal. Meaning thereby, the claimant-appellants are entitled to Rs.14,38,000/- more over and above the compensation awarded by the learned Tribunal.

Learned counsel for respondent No.3/Insurance Company has not been able to controvert or point out any infirmity in the above calculations (Mark-A). Hence, the same is accepted.

In view of the above, the claimant-appellants are held entitled to compensation of Rs.14,38,000/-more over and above the amount of Rs.13,00,000/-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, for onward disbursement to the claimant-appellants, in proportion so arrived at by it, 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.

The instant appeal stands disposed of, accordingly.

August 30, 2019 (RAMENDRA JAIN)
anju JUDGE

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