IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

217 FAO-5343-2014 (O&M)

Date of decision: 29.10.2019

HARJINDER SINGH ... Appellant

Versus

PALWINDER KAUR & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sandeep Bansal, Advocate for the appellant.
Mr. NS Gill, Advocate for
Mr. Munish Gupta, Advocate for respondents No.1 and 2.

****

REKHA MITTAL, J. (Oral)

The owner and driver of offending vehicle, motorcycle No.PB-07-AC-2919 is in appeal to assail the award dated 22.11.2013 passed by the Motor Accidents Claims Tribunal, Hoshiarpur whereby compensation has been assessed on account of death of Surjit Singh in a motor vehicular accident that took place in the intervening night of 13/14.10.2012 but Surjit Singh succumbed to injuries on 21.10.2012.

The Tribunal awarded Rs.7,83,335/-, detailed hereunder:-

Annual income of the deceased	Rs.1,52,500/-
Multiplier	5
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.5,08,335/-
Expenses on funeral	Rs.15,000/-
Medical expenses	Rs.2,30,000/-
Loss of consortium	Rs.10,000/-
Loss of estate	Rs.10,000/-

Counsel for the appellant would argue that findings of the Tribunal on issue No.1 are erroneous and merits reversal. It is further argued that no accident was caused by the appellant while driving the aforesaid motorcycle but he has been falsely indicted in criminal as well as civil proceedings on the basis of false FIR No.86 dated 21.10.2012 registered at Police Station Mahilpur under Sections 279 and 304-A IPC.

With regard to quantum of compensation, it is argued that the Tribunal has wrongly assessed annual income of the deceased at Rs.1,52,500/-. The son of deceased is not entitle to loss of dependency and admissible deduction should be 50%.

Counsel representing the respondents/claimants, on the contrary, has supported findings of the Tribunal on issue No.1 and so also assessment of compensation and entitlement of the claimants to loss of dependency in addition to compensation under conventional heads.

I have heard counsel for the parties, perused the paper book and records.

The Tribunal framed issue No.1 to the following effect:-

> Whether death of Surjit Singh took place in road accident on 13.10.2012 caused due to rash and negligent driving of motorcycle No.PB-07-AC-2919 by respondent No.1. If so, its effect?OPP

The Tribunal, on a detailed consideration of materials on record, recorded its conclusions determining issue No.1 in favour of the claimants and against the appellant. Counsel for the appellant has failed to advance any convincing arguments to substantiate plea of the appellant that findings of the Tribunal on issue No.1 suffer from an error much less perversity warranting intervention. I have gone through detailed discussion in the award for determination of issue No.1 but unable to find any justifiable reason to differ with findings of the Tribunal on the question of rashness and negligence on the part of appellant for causing the accident. In this view of the matter, challenge to findings of the Tribunal on issue No.1 is not meritorious and accordingly rejected.

The claimants examined Kulwinder Kaur, Senior Tax Assistant, Income Tax Department, Hoshiarpur AW1. She proved income tax returns for the assessment years 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 filed by the deceased himself. Another return marked as Ex.A5 for the assessment year 2012-13 was filed by Palwinder Kaur, wife of the deceased. The Tribunal has assessed income of the deceased by taking average of five income tax returns. There is nothing on record suggestive of the fact that in support of income tax return for the assessment year 2012-13, claimants produced any supporting documents. In the given circumstances, the latest income tax return filed by the deceased himself would be taken into consideration for assessing loss of dependency. Perusal of income tax return for the assessment year 2011-12 filed by the deceased himself reveals that total income of the deceased from business of Surjit Book Depot was Rs.1,38,000/- and there was income of Rs.6200/- from other sources. In the given circumstances, annual income of the deceased would be taken at Rs.1,38,000/-. As the deceased was 67 years old, claimants are not entitle to addition in income for future prospects. The Tribunal has allowed deduction to the extent of 1/3rd for personal and living expenses of the deceased. Even if it is accepted that widow of the deceased is the only dependent, deduction for personal expenses to the tune of 1/3rd has rightly been applied by the Tribunal. In this context, reference can be made to judgment of this Court **Balvir Kaur and others Vs. Surender alias Surinder Singh and others, FAO No.8419 of 2015, decided on 27.03.2019**. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.4,60,000/- [(1,38,000 x 5) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

A sum of Rs.2,30,000/- towards medical expenses allowed by the Tribunal is correct and affirmed.

In view of the above, total compensation is Rs.7,60,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.23,335/- (7,83,335 – 7,60,000).

The appeal is disposed of in the aforesaid terms.

29.10.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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