IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6442 of 2013

Date of Decision: February 27 , 2019.

Bimala Sharma and others ...... APPELLANT (s)

Versus

Tilak Raj and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Chanderhas Yadav,Advocate
for the appellants.

Mr. R.N.Singal, 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, Rewari (for short, the 'Tribunal') vide impugned award dated 24.07.2013 on account of death of Bhawani Shankar in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Bhawani Shankar, who lost his life in a motor vehicle accident which took place on 09.11.2010. FIR No.414 dated 09.11.2010 under Sections 279/304A IPC was registered against respondent No.1 at Police Station Model Town, Rewari. 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 TATA 407 vehicle bearing registration

No. DL-1-LG-/0634 by respondent No.1-Tilak Raj. This finding of the learned Tribunal has attained finality.

Learned Tribunal while assessing income of Bhawani Shankar (deceased) as ₹9,334/- per month, awarded a total sum of ₹10,53,464/- to the claimants. He was held to be 45 years at the time of the accident. Deduction to the extent of 1/3rd on account of personal expenses was effected. Multiplier of 14 was applied. ₹5,000/- was awarded to the claimant-widow on account of loss of consortium, besides, ₹3,000/- towards funeral expenses. 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. It is further submitted that increment on account of future prospects should have been afforded. 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 refutes the abovesaid averments and submits that the impugned award does not call for any enhancement of the compensation in the facts and circumstances of the case. It is contended that in fact deduction of 1/3rd has been wrongly applied keeping in view the fact that it is only the widow who can be treated to be dependant upon the deceased, the two sons of Bhawani Shankar being major. 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 Bhawani Shankar in a motor vehicle accident which took place on 09.11.2010 due to the rash and negligent driving of the offending TATA 407 bearing registration No. DL-1-LG-0634 by respondent No.1-Tilak Raj. Neither is there a dispute regarding liability of the Insurance company. Income of the deceased i.e. ₹9,334/- per month was assessed on the basis of salary certificate (Ex.PW3/B), which was proved by PW3 Matadin, Proprietor of M/s Rajni Construction Company, Malpura. The deceased-Tialk Raj was held to be 45 years old at the time of the accident on the basis of evidence on record. I do not find merit in the argument raised by learned counsel for the Insurance company that in this case, deduction of 50% should have been effected, rather than 1/3rd. Learned counsel for respondent-Insurance company is unable to deny that the two sons of Bhawani Shankar were admittedly aged 19 and 21 years at the time of the accident. There is no evidence on record to refute the plea that they were dependant upon their father. Deduction of 1/3rd has thus been correctly effected by the learned Tribunal.

Addition in income at the rate of 25% on account of future prospects has to be afforded in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. Multiplier of 14 has been correctly applied as the deceased was 45 years old at the time of the accident. The claimants are entitled to ₹15,000/- each on account of funeral expenses (instead of ₹3,000/-) and loss of estate. Instead of ₹5,000/- to the claimant-widow on account of loss of consortium, all the appellants are held entitled to a consolidated sum of ₹1,00,000/- on account of loss of consortium (spousal and parental) in terms of the judgment of the Hon'ble

Supreme Court in **Vimla Devi and others v. National Insurance Company Ltd. and anr.**, *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	9,334 p.m. i.e. 1,12,008/- per annum
2.	Total income after addition at the rate of 25% on account of future prospects	1,12,008 + (1,12,008 **x** 25%) = 1,40,010
3.	Net income after 1/3rd deduction on account of personal expenses	1,40,010 – (1,40,010 **x** 1/3) = 93,340
4.	Total dependancy after applying a multiplier of 14	(93,340 **x** 14) = 13,06,760
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal and parental consortium	1,00,000
	Grand Total	₹14,36,760/-

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 entire amount at the rate of 7.5% per annum, instead of 6%, 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 27 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No