IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3663 of 2016 (O&M)
Date of Decision: November 25, 2019

Rajendra Pandey and others ...... Appellants(s)

Versus

Ajay Kumar and others ..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rahul Garg, Advocate for the appellants.

Service upon respondent no.1 dispensed with vide order dated 15.07.2019.

None for respondent no.2, despite service.

Mr. Deepak Suri, Advocate for respondent no.3.

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LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the claimants vide award dated 11.04.2014, passed by learned Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal).

Claimants filed a petition under Section 166 read with Section 163-A of the Motor Vehicles Act, 1988, seeking compensation on account of death of Nagesh Kumar Pandey, due to the injuries suffered by him in the motor vehicle accident, which took place on 04.06.2012. Deceased was claimed to be a 44 year old Chartered Accountant, earning Rs.54,167/- per month as salary.

Learned Tribunal on considering the evidence on record concluded that Nagesh Kumar Pandey lost his life due to the injuries received by him in the accident in question, which took place on 04.06.2012, due to the rash and negligent driving of the offending truck bearing registration No. HP-15-6533, by its driver Ajay Kumar - respondent no.1. Learned Tribunal accepted the deceased to be a practising Chartered Accountant as per the evidence on record. Income of the deceased was assessed as Rs.3,00,000/- per annum with a deduction of Rs.1,030/- towards income tax. Learned Tribunal awarded a sum of Rs.43,05,950/- as compensation to the claimants, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	2,98,970/- per annum
2.	Income after deducting 1/4th as personal living expenses of the deceased	2,98,970/- minus 74,742/- = 2,24,228/-
3.	Dependency after applying multiplier of 14	2,24,228 x 14 = 31,39,192/-
4.	30% addition in the amount of compensation on account of future prospects	31,39,192 + 9,41,758/-
5.	Funeral expenses, transportation and last rites etc.	25,000/-
6.	Loss of consortium to claimant no.3	1,00,000/-
7.	Loss of care and guidance to claimants no.4 and 5	1,00,000/-
	Total	**Rs.43,05,950/-**

Present appeal has been filed seeking enhancement of the above aforesaid compensation.

Learned counsel for the appellants submits that income of the deceased has been incorrectly assessed. The claimants placed on record the income-tax returns of the deceased for the years 2009-2010 Ex.PW3/3, 2010-2011 Ex.PW1/3 and 2011-2012 Ex.PW7/1 besides for the year 2012-2013 CW1/3, which show that the deceased was in receipt of income much higher than Rs.3,00,000/- per annum. It is fairly stated that in terms of **National Insurance Company Limited v. Pranay Sethi and others, *2017(16) SCC 680,*** claimants are entitled to 25% instead of 30% increment towards future prospects. It is further submitted that 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 others, *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 total compensation be enhanced.

Learned counsel for the insurance company, however, refutes the above said arguments while submitting that excessive compensation has already been awarded by the learned Tribunal, which calls for no enhancement. Dismissal of this appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There is no dispute regarding death of Nagesh Kumar Pandey in the motor vehicle accident, which took place on 04.06.2012, due to the rash and negligent driving of the offending truck bearing registration No.

HP-15-6533, by its driver Ajay Kumar - respondent no.1. There is also no dispute regarding the liability of the insurance company in this case. It is a matter of record that the deceased was a practising Chartered Accountant at the time of his death. His income tax returns as noticed above are on record. Learned counsel for the insurance company is unable to deny that the last income tax return for the financial year 2012-2013 – Ex.CW1/3 was filed before the death of Nagesh Kumar Pandey in the accident, which took place on 05.06.2012. As per the said income-tax return, the deceased had an income of Rs.4,56,400/- per annum. Income tax of Rs.15,000/- was deducted therefrom. In this view of the matter, learned Tribunal has indeed erred in assessing income of the deceased to be Rs.3,00,000/- per annum. It is accordingly assessed as Rs.4,41,400/- per annum (4,56,400 – 15,000). The deceased was admittedly 45 years old at the time of accident. 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,*** 25% increment has to be afforded on account of future prospects. Deduction of $1/4^{th}$ was correctly effected by learned Tribunal. Multiplier of 14 was also correctly applied by learned Tribunal. However, instead of a consolidated sum of Rs.1,00,000/- awarded by the learned Tribunal towards funeral expenses/last rites and transportation, claimants are entitled to a sum of Rs.15,000/- on account of funeral expenses besides a sum of Rs.15,000/- on account of loss of estate. Instead of a sum of Rs.1,00,000/- awarded towards loss of consortium, appellant no.3-widow is entitled to a sum of Rs.40,000/-

on account of loss of spousal consortium. Appellants no.4 and 5-children are entitled to a sum of Rs.40,000/- on account of loss of parental consortium. They are not entitled to Rs.1,00,000/- awarded by the learned Tribunal towards loss of care and guidance. Appellant no.1 is entitled to Rs.40,000/- towards loss of filial consortium. Reference in this regard can gainfully be made to the judgment of the 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-2110-2016, title ***Shri Ram General Insurance Company 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	4,41,400/- per annum
2.	Income after deducting 1/4th as personal living expenses of the deceased	4,41,400 - 1,10,350/- (4,41,400 x 1/4) = 3,31,050/-
3.	Total income after addition at the rate of 25% on account of future prospects	3,31,050 + 82,763 (3,31,050 x 25%) = 4,13,813/-
4.	Dependency after applying multiplier of 14	4,13,813 x 14 = 57,93,382/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of filial consortium to appellant no.1	40,000/-
8.	Loss of spousal consortium to appellant no.3	40,000/-
9.	Loss of parental consortium to appellants no.4 and 5	40,000/-
	Total	**59,43,382/-**

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 entire amount, from the date of filing of the claim petition till realization. The appellants are however, not entitled to interest for the period of delay in filing of this appeal, which was condoned while specifically observing so. 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

November 25, 2019.

Sunil

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